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No. 84-465

In the Supreme Court of the United States

OCTOBER TERM, 1984

DR. LEE ROY BLACK, Director of the Missouri Department of Corrections and Human Resources; DICK D. MOORE, Chairman, Missouri Board of Probation and Parole,
Petitioners,

VS.

NICHOLAS J. ROMANO,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

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Petition for Writ of Certiorari Filed, August 30, 1984
Certiorari Granted, November 26, 1984

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RELEVANT DOCKET ENTRIES

United States District Court,
Eastern District of Missouri

11/ 4/82 PETITION FOR WRIT OF HABEAS CORPUS W/EXHIBIT A & Suggestions in support w/Transcript of proceedings fld. (Docket No. 82-7803c(4))

DECLARATION IN SUPPORT of Request to Proceed in Forma Pauperis. fld. by petitioner. Leave to file in Forma Pauperis. Granted (ELF) MOTION for appointment of counsel and waiver of docket fee fld. by petitioner.

MOTION to be appointed as counsel in petition. w/exhibit L. fld. by Jordan B. Cherrick
MOTION to expedite Petition for Writ of Habeas Corpus. fld. by Petitioner.

11/9/82 Motions of 11/4/82 and file delivered to Judge Cahill.

11/10/82 ORDER (CSC) fld. Ordered that Jordan B. Cherrick be and is appointed to serve as atty and counsel to the petitioner. cc: parties. (copy of entire file forwarded to Mr. Cherrick)

12/28/82 MOTION for leave to file amended Habeas Corpus Petition. w/exhibit A. fld. by pltff. Leave Granted (CSC).

12/28/82 *AMENDED PETITION FOR WRIT OF HABEAS CORPUS.* w/exhibits A. & B. fld. by petitioner. Leave Granted (CSC).

1/21/83 ORDER (CSC) fld. That respondents shall within 30 days from date of this order show cause why an evidentiary hearing should not be held in this mattera and why petitioner should not be discharged from parole, respondents shall reply specifically to each allegation contained in the petition and file transcripts of any and all evidentiary hearings which may have been held in the Mo. courts on all other relevant documents. cc: parties. (copy of Petition for writ of habeas corpus; copy of amended petition for writ of habeas corpus also sent to Kristie Green). by cert. mail.

2/17/83 RESPONSE TO COURT ORDER TO SHOW CAUSE why a Writ of Habeas Corpus should not issue w/exhibits A. & B. fld. by defts.

1/18/83 Response of 1/17/83 and file delivered to Judge Cahill.

3/17/83 REPLY SUGGESTIONS - To Respondent's Suggestions Opposing Petitioner's Request For Habeas Corpus Relief, fld by Ptnr

3/17/83 MOTION - For Oral Argument, fld by the Ptnr (ref 3/24/83)

*3/25/83 HEARING SETTING (CSC) fld. Hearing in this matter is reset from March 31, 1983, to APRIL 14, 1983 at 10:00 a.m. cc: parties.

*3/24/83 LETTER to attys re: oral arguments granted. by court. (CSC).

4/14/83 HEARING RESETTING (CSC) fld. Cause reset for hearing at 10:00 a.m. on Friday, MAY 6, 1983. cc: parties.

5/ 6/83 HEARING RESETTING (CSC) fld. Cause is reset for hearing on MONDAY, JUNE 6, 1983 at 10:00 a.m. cc: parties.

6/ 6/83 PARTIES PRESENT FOR HEARING ON HABEAS CORPUS. Cause taken under advisement.

6/20/83 ORDER AND MEMORANDUM (CSC) fld. Ordered that Nicholas James Romano's petition for writ of habeas corpus is GRANTED. cc: parties.

6/23/83 MOTION to correct technical error in Memorandum Opinion of June 20, 1983. w/exhibits A. & B. fld. by petitioner. (ref 7-1-83)

6/27/83 Motion of 6/23/83 and file delivered to Judge Cahill.

6/29/83 MOTION to Stay Judgment fld. by respondents. (ref .....)

6/29/83 MOTION to Amend the Judgment, Vacate or set aside the judgment and grant an evidentiary hearing. w/sugg. in support. fld. by respondents. (ref 7-1-83)

7/ 1/83 ORDER (CSC)—Fld., In response to the motions to amend the Court's memo dated June 20, 1983, fld by all parties in this action, the Court hereby changes page 2 of the memorandum, beginning at line 14 which reads etc., The Court now inserts the following as substitute language. The previous language in the 6/20 memo was inadvertent but in no way impacted on the Court's substantive ruling in this habeas corpus case. Thus, all other portions of the 6/20 memo, including the Court's ruling, shall remain unchanged. cc: parties

6/30/83—Motions of 6/29/83 and entire file delivered to Judge Cahill.

7/21/83 NOTICE OF APPEAL fld. by resps-appellants. (inadvertently sent back to defts-appellants by cashier). cc: attys, Judge Cahill; Court reporter. USDC & USCA fees paid. 2 cert. copies Notice of Appeal; 2 copies Order & Memorandum fld 6/20/83; 2 cert. copies docket sheets forwarded USCA8 6/27/83.

7/26/83 NOTICE OF CROSS-APPEAL fld. by petitioner-appellant. cc: attys; Judge Cahill; Court re-

porter. USDC & USCA fees in forma pauperis. 2 cert. copies Notice of Cross-Appeal; 2 copies Order & Memorandum fld. 6/20/83; 2 copies Order fld 7/1/83; 2 cert. copies docket sheets forwarded USCA. 7/27/83.

7/27/83 PUBLISHED with West Publishing Co., Bureau of National Affairs and Lexis Opinion Collection Dept. Order and Memorandum fld. 6/20/83.

8/ 8/83 DESIGNATION OF RECORD fld. by appellants. Dr. Lee Roy Black et al

8/ 8/83 SUPPLEMENTAL DESIGNATION OF RECORD. fld. by appellee and Cross-appellant Nicholas James Romano.

8/12/83 One Certified & 2 copies of designated record, 1 volume transcript of proceedings in the Circuit Court of Laclede County, Mo. forwarded to USCA.

11/18/83 CJA-20 fld. original sent to A.O., Washington, D.C. in the amt. of $1,151.02 for Jordan Bernard Cherrick (CSC).

6/29/84 ORDER (USCA) fld. Petition of appellants/ cross appellees for rehearing filed in this cause having been considered, it is now here ordered by this Court that the same be, and it is hereby, denied.

7/10/84 JUDGMENT (USCA) fld. Ordered and adjudged that the judgment of the said District Court is affirmed in accordance with the opinion of this Court. cc: parties.

7/12/84 ORDER (USCA) fld. By the Court that appellee/cross-appellant shall recover the sum

of $100.80 for briefs from appellants/cross-appellees.

10/23/84 NOTICE of filing petition for certiorari. by Nicholas James Romano. fld.

10/23/84 NOTICE OF filing petition for certiorari by Lee Roy Black. fld.

12/11/84 FORWARDED TO USCA—one volume of transcript of proceedings in the Circuit Court of Laclede County, Mo. 26th Judicial Circuit, Div. II at Lebanon, Mo.

United States Court of Appeals
For the Eighth Circuit

1983

July 29 Docketed case No. 83-2001

July 29 Certified copies notice of cross appeal; docket entries; order; judgment rec'd from DC (1)

July 29 ORDER: Jordan B. Cherrick, St. Louis, appointed under CJA to represent appellant (pro rated with 83-2000) (2)

July 29 BRIEFING SCHEDULE: Aplnt/Cr. Aplee DR 8/8/83; Aplee/Cr. Aplnt DR 8/18/83; Clerk's Record 8/30/83 OR Apndx 9/12/83; Transcript 8/30/83; Brf. Aplnt Cr. Aplee (Black) 9/23/83; Brf. Aplee/Cr. Aplnt (Romano) 10/12/83 Reply Brf. Aplnt/Cr. Aplee (Black) 11/14/83; Reply Brf. Aplee/Cr. Aplnt (Romano) 11/28/83 w/ 2000

Aug. 2 APPEARANCE for appellant. (3) cg

Aug. 5	Received appellants/cr. appellee's designation of record.
Aug. 5	APPEARANCE for appellee. (4)
Aug. 8	Received supplemental designation of aplee./cr. aplnt. w/83-2000
Aug. 23	BRIEF APPELLANT/CR. APPELLEE: (Black) w/ser 8/22 (covers)
Sept. 7	MOTION for leave to file overlength brf. w/2000
Sept 8	ORDER: Appellant's cross-Appellee's motion for leave to file an overlength brief is granted. Said brief shall not exceed 65 pp. Appellant/ Cross Appellee's Reply brief shall not xceed 15 pp.
Sept. 21	BRIEF APPELLEES/CR. APPELLANTS w/ ser. 9/21 5 copies. w/83-2000. (ROMANO)
Sept. 29	TO SCREENING w/83-2000.
Oct. 24,	*REPLY BRIEF* Appellant/Cross Appellee (BLACK) w/ser. 10/20 7 copies. w/83-2000. rh.
Oct. 26	Aplee/cr. aplnt. additional citation of authority
Dec. 16	MOTION of aplnt. to Incur the Expense of Hiring a Court Reporter to Transcribe Oral Argument. w/2000
Dec. 28	ORDER: Aplee/cross appellant's motion for authorization to hire a court reporter for oral arg. in this Court is denied without prejudice to appellee/cross appellant's right to seek preparation of a transcript at a later date. w/2000

Dec. 29	Transferred to January session.
8/12/83	3 copies of D.R. & 1 volume of transcript of Laclede County w/2000
1984	
Jan. 12	ARGUED AND SUBMITTED to Judges Ross, J. R. Gibson and Bowman in St. Louis. Mr. John C. Reed for Black, et al.; Mr. Jordan B. Cherrick (appointed) for Ramano. Rebuttal by Mr. Reed. Recorded. w/83-2000.
May 31	OPINION BY BOWMAN, PUBLISHED. w/83-2000 pa
May 31	JUDGMENT: Judgment of the Dist. Ct. is hereby affirmed in accordance with the opinion of this Court. w/83-2000 pa.
June 12,	petition appellants/CROSS APPELLEES (BLACK & MOORE) w.service. w/2000.
June 13	BILL OF COSTS of appellee/cross-appellant w/service w/2000.
June 28,	ORDER: Petition of aplnts/cr. aplees for rehearing filed in this cause having been considered, is hereby denied. w/2000
July 9	MANDATE ISSUED w/2000.
July 11	ORDER: APPELLEE/CROSS-APPELLANT shall recover the sum of $100.80 for briefs from appellants/cross-appellees w/2000.
July 12	RECEIPT FOR MANDATE w/2000
Aug. 31	Romano's Motion for Leave to Incur the Expense of Hiring a Court Reporter to Transcribe Oral Arguments w/2000

Oct. 2	Appellant's Brief in Opposition to Petition for Writ of Cert. which was filed in Supreme Court
Oct. 11	ORDER: Appellee/cross-appellant's motion for preparation of a transcript is DENIED. w/2000
Oct. 15	NOTICE OF FILING of petition for writ of certiorari to Supreme Court as Case No. 84-465, dated August 30, 1984. (w/83-2000) cg
Oct. 15	NOTICE OF FILING of petition for writ of certiorari to Supreme Court as Case No. 84-5557, dated September 24, 1984. (w/83-2000) cg
Nov. 30	CERTIFIED COPY OF ORDER of Supreme Court denying certiorari in Case No. 84-5557, dated November 26, 1984. (w/83-2000) cg
Nov. 30	CERTIFIED COPY OF ORDER of Supreme Court granting certiorari in Case No. 84-465, dated November 26, 1984. (w/83-2000) cg

IN THE
CIRCUIT COURT OF LACLEDE COUNTY, MISSOURI
26TH JUDICIAL CIRCUIT, DIVISION II
AT LEBANON, MISSOURI

Case No. 2437

STATE OF MISSOURI,
Plaintiff,

vs.

NICHOLAS JAMES ROMANO,
Defendant.

TRANSCRIPT OF PROCEEDINGS

(August 9, 1977)

On Monday, the 15th day of November, 1976, the above-entitled cause came on regularly for hearing before the Honorable DEAN WHIPPLE, at Lebanon, Missouri, with defendant present. The State of Missouri was represented by Mr. Earl F. Seitz, Assistant Prosecuting Attorney and defendant appeared in person and was represented by Mr. Jim Baldwin and Mr. Patrick Eng.

* * *

COURT: Court will call Case number 2437, State of Missouri versus Nicholas James Romano. Are you Nicholas James Romano?

ROMANO: Yes, sir.

COURT: You're represented here by Mr. Eng and Mr. Baldwin, is that correct?

ROMANO: Yes, sir.

[2] COURT: I don't believe the defendant's been arraigned in this county.

BALDWIN: We appeared down here in May, Your Honor.

COURT: Wait a minute, excuse me.

BALDWIN: This past May. Now whether or not. I don't recall whether there was arraignment or not.

COURT: At this time I would ask the State to read the Information to the defendant and advise him of the range of punishment on each count.

SEITZ: This Information is in the Circuit Court of Boone County, Missouri, State of Missouri versus Nicholas James Romano. There is two counts, alleged count one, transfer of a controlled substance; count two, sale of controlled substance. The case number from Boone County is 29, October '75, 100233. This was on a Change of Venue, here to this county. The Information is as follows: "Comes now, Earl F. Seitz, Assistant Prosecuting Attorney within and for the County of Boone, State of Missouri, and upon his official oath, informs the Court that NICHOLAS JAMES ROMANO on or about the tenth day of December, 1974 at said county, Boone, State of Missouri in count one did wilfully and unlawfully and feloniously, transfer a certain controlled substance to-wit, marijuana in an [3] amount more than 35 grams a Schedule I controlled substance as defined by the Revised Statutes of Missouri, 195.017 of 1969 and revised by Missouri Division of Health on September 28, 1974 to an individual. And, in count two, did wilfully and unlawfully and feloniously sell a certain controlled substance to-wit, marijuana, a Schedule I controlled substance as defined by Revised Statutes of Missouri 195.017, 1969, revised by the Missouri Division of Health on September 28, 1974 to an individual for and in consideration of lawful currency of the United States of America contrary to the forms that the statutes made in such cases

made and provided, and against the peace and dignity of the State." Signed, Earl F. Seitz, Assistant Prosecuting Attorney. "EARL F. SEITZ, Assistant Prosecuting Attorney, of Boone County, makes oath and states that the facts above and foregoing are true and correct according to his best information and belief." Signed, Earl F. Seitz. Mr. Romano, in both of those counts, the range of punishment is a minimum of five years to a maximum of life imprisonment in Missouri Department of Corrections.

COURT: Mr. Romano, you've heard the reading of the Information on the two counts in that Information. Do you understand what you're charged with in each count?

[4] ROMANO: Yes, sir.

COURT: Do you understand the range of punishment for each count in the Information?

ROMANO: Yes, sir.

COURT: Knowing the offenses with which you're charged and the range of punishment. Let's take first count one on count one, which is charging you with wilfully and feloniously transferring a certain controlled substance, to-wit, marijuana. How do you plead, guilty or not guilty?

ROMANO: Ah. . . guilty, Your Honor.

COURT: As to count two, you are charged with the wilfully, unlawfully, and feloniously selling a certain controlled substance, to-wit, marijuana. How do you plead to count two of the Information?

ROMANO: Guilty, Your Honor.

COURT: Before the Court can accept your plea of guilty on these two counts, it will be necessary for me to ask you several questions under oath. Would you raise your right hand to be sworn. Do you solemnly swear the

testimony you're about to give in this cause of action to be the truth, so help you God?

ROMANO: I do.

COURT: Would you have a seat in the witness chair, please.

[5] DIRECT EXAMINATION BY COURT

Q. Would you state your full name for the record? A. Nicholas James Romano.

Q. How old are you Mr. Romano? A. 28.

Q. Where do you reside at the present time? A. 910 Oak Place, Columbia, Missouri.

Q. Where are you employed? A. Ah . . . I'm employed with my stepfather and then I have ah . . . two other jobs at night. I work at two bars in Columbia, Missouri.

Q. What's the extent of your formal education? A. Ah . . . 12 years.

Q. Did you graduate from high school? A. Yes, sir.

Q. What's your other job? You said you have two. A. Well, my stepfather owns property in Columbia and I help him with the property.

Q. You mean rental property? A. Right.

Q. What do you do, help him with the maintenance work? A. Right.

Q. Are you married? A. No, sir.

Q. Have you ever been married? [6] A. No, sir.

Q. What's the condition of your physical health today, good or bad? A. Up to par, sir.

Q. What was the condition of your physical health on the date of these offenses, which was December the 10th, 1974? A. When this occurred?

Q. Wait, excuse me just a minute. This occurred on September 28, excuse me.

ENG: December the 10th.

Q. (Court) December 10th. The date in here is the revision date of the statute, all right. It's alleged to have occurred on December the 10th, 1974. What was the condition of your physical health on that date? A. Ah . . . well, I don't think it was up to par.

Q. Well, were you physically sick? Were you under a doctor's care? A. No, I wasn't physically sick. Mentally, I could have been a little ah . . . off balance.

Q. Well, were you suffering from a mental disease or defect on that date? A. Not that I know of. It's just ah . . .

Q. Well, whether or not you used good judgment is one thing. [7] A. That's what . . . that's what I'm trying to say.

Q. All right. But, have you ever been hospitalized for mental disease or defect? A. Well, after this happened, I ah . . . committed myself to a mental institute, institution in Columbia Mental Hospital.

Q. What was that, Mid-Missouri? A. Mid-Missouri Mental Health.

Q. Were you ever adjudged to be mentally incompetent in that institution? A. No, sir.

Q. Do you know of your own personal knowledge what were the results of the evaluation resulting during that hospitalization? A. Ah . . . I think they were positive as far as I know.

Q. Well, what does that mean? A. Well, they told me there was nothing wrong with me.

Q. All right. Now, in this Information is charged in both counts that you did each act, both in count one and count two wilfully. Do you understand that to mean that it was an intentional act on your part? The word wilfully means it was an intentional act. A. Yes, sir.

Q. You understand that? A. (Nods head)

[8] Q. Now the Information further in charges that you did unlawfully commit these two offenses. One of them of transferring possession of a controlled substance and of selling a controlled substance, do you understand unlawfully to mean it was against the law to do that? A. Yes, sir.

Q. To transfer or to sell the marijuana you had in your possession? A. Yes, sir.

Q. The Information further alleges in both counts that you did feloniously transfer. Do you understand feloniously to mean that the State of Missouri under statutory law admonishes you not to do this act, saying that it's wrongful? And it further say that if you are apprehended after committing this act that a punishment will be assessed upon you after you are found guilty or pled guilty. Do you understand that? A. Yes, sir.

Q. Now, tell me briefly what you did in each of these counts. First of all, let me ask you another. In both of these counts, the acts, alleged count one and two, did they take place at the same time? A. Ah . . . yes, sir.

Q. All right. Tell me what transpired? A. Well, the State sent an informer around to my house and [9] introduced me to the narcotic, opium and got me . . . well, they introduced me to it and I from and . . . after I was introduced to it, they ah . . . lured me into their trailer and asked me to make a trade with them, marijuana for opium. And ah . . . that's more or less what happened.

Q. You say into the trailer, you mean where they lived? A. Yes. The State was paying rent on this trailer in Columbia and they were distributing drugs out of this trailer. They weren't . . . they were having another person do this for them while they witnessed it.

Q. Did you know the man that you say you dealt with to make the trade for the marijuana? A. Well, he was a narcotics agent and it was hired from St. Charles, Missouri.

Q. Now, what do you mean that he introduced you to opium? What do you mean by that? A. Well, they sent around an informer and the informer had brought the drug to my house on two occasions.

Q. Now, is the informer the same one that you say is the narcotics agent? A. No, the informer is ah . . . is the guinea pig that they get to work for them and after . . . after they introduced me to it, then I was lured to the narcotics agent.

Q. How long before you made this trade that this informer [10] first come to your house? A. Probably two weeks before it took place.

Q. All right. Do you understand you are entitled to a jury trial on both of these counts, either jointly or separately? A. Yes, sir.

Q. Do you understand that by entering your plea of guilty that you will not have a jury trial, that this is your day in court on both of these charges and that what happens here today will finally dispose of it? A. Yes, sir.

Q. And do you waive your right to a jury trial on both of these offenses at this time? A. I do.

Q. Do you understand that if you had elected to have a jury trial, the State of Missouri would be required to bring forth witnesses to testify against you in your presence, in the presence of a jury to prove your guilt beyond a reasonable doubt? In other words, you have a right to face your accuser's, do you understand that? A. Yes, sir.

Q. Now, do you understand that by entering your plea of guilty, you are waiving your right to face your . . . an accuser to face your accuser? [11] A. Yes, sir.

Q. And do you waive that right at this time? A. Yes, sir.

Q. Now, do you further understand that by entering your plea of guilty, you are in fact admitting your guilt and waiving your right against self-incrimination? In other words, the right to remain silent, to not testify against yourself. That when you plead guilty, you are in fact, admitting your guilt and have been sitting here telling me your part in this wrongful act and this is the result of your waiving your right against self-incrimination. Do you understand that? A. Yes, sir.

Q. And do you waive that right at this time? A. Yes, sir.

Q. Now, do you further understand that if you had elected to have a jury trial, you would also have available to you the power of subpoena to subpoena persons to appear to testify in your behalf and to assist you in presenting a defense to the offenses alleged in this Information? Do you understand that? A. Yes, sir.

Q. Do you understand that you're waiving this because you have elected to plead guilty and to waive a jury trial? Do you understand that? [12] A. Yes, sir.

Q. Now, you're represented here by Mr. Patrick J. Eng and Mr. James E. Baldwin. Are you satisfied with their representation of you on this matter? A. I am.

Q. Have they done for you everything you've . . . that you've asked them to do in regards to this case? A. I am . . . I mean, yes, sir.

Q. Have they failed to do for you anything you've asked them to do to assist you in defending yourself in this case? A. No, sir.

Q. All right. Now, after we complete this questioning, there will be recommendations made to this Court,

possibly by your attorneys and by the Prosecuting Attorney concerning the punishment in this case. Now, do you understand that those are merely recommendations and that this Court is not bound by them? A. I do.

Q. Do you understand that it's this Court and this Court alone that will assess your punishment in this case? A. Yes, sir.

Q. Now, it's further my understanding that there's going to be a request which will be granted for a presentence investigation. It may even be after that's back in [13] that further recommendations will be made either by the State or your attorney concerning punishment. But do you understand regardless of whether those recommendations are made today or at the time I read the presentence investigation report that they are merely recommendations and I'm not bound by them? Do you understand that? A. I do, sir.

Q. Have you been threatened or coerced in any manner by anyone to induce you to plead guilty here today? A. No, sir.

Q. Are you entering your plea of guilty for any reason other than the fact that you are guilty of the offenses charged? A. No, sir.

Q. Are you telling the Court at this time that your plea of guilty is entered into by you freely and voluntarily? A. Yes, sir.

Q. Now, have you understood the proceedings that have transpired here today to this point? A. I have.

Q. Now, do you further understand that a presentence investigation will be ordered, an investigation made by the Department of Probation and Parole and it will be [14] brought back before me after I've had . . . had it given to me and at that time sentence will be pronounced

upon you. And at that time I will determine whether or not you will be paroled or required to serve a sentence. Do you understand that? A. Yes, sir.

Q. So, except for that, we'll have everything done today except the final sentence and parole, if there's one granted. Do you understand that? A. Yes, sir.

Q. So that you and I understand what's transpiring here. I'm sure your attorneys have told you, but I wanted to make sure you had an understanding? A. Un huh.

Q. Does either attorney for this gentleman have any questions?

BALDWIN: I have no questions, Your Honor.

ENG: No, Your Honor.

COURT: You may step down, Mr. Romano. Now, gentlemen . . . Excuse me just a minute, Mr. Romano, after examining you under oath, the Court determines that your plea of guilty was entered into by you freely and voluntarily, both on count one and count two of the Information and the Court accepts your plea of guilty at this time. Now, am I not correct, gentlemen [15] that a presentence investigation is going to be requested?

BALDWIN: That is correct, Your Honor.

SEITZ: That's the State's understanding.

COURT: All right. Now, is it my understanding or was I incorrect that it's being left up to the Court, the range of punishment plus whether it's probation or parole or is the State going to make recommendation on the years of punishment?

SEITZ: The State is making recommendation on the punishment for each count and also recommendation as to whether probation . . .

COURT: All right, I'm going to wait and receive those at the time I have the presentence investigation in

my hand unless there is an objection on behalf of the State or the defendant?

BALDWIN: We have no objection, Your Honor.

SEITZ: No objection to that, sir.

COURT: So it may be that the State, I'm sure they have all the information they want available, but I want them to have available to them the presentence investigation reports too. So, with that I'm going to order Missouri Department of Probation and Parole to make a presentence investigation on you. I guess I'll just have them contact the Prosecutor's office or [16] Mr. Eng's office to get a hold of the defendant. Keep your attorney advised at all times of where he can get a hold of you, so when the probation officer wants to talk to you, well they'll know how to get a hold of you.

ROMANO: Okay.

COURT: Anything further to be . . . that needs to be done today?

ENG: Will you have any idea when this might transpire?

COURT: Do you have any idea how long it takes the Columbia office to get out presentences down here. We anticipate six weeks going through Columbia.

SEITZ: Mr. Romano, have you lived in Columbia all your life?

ROMANO: Yes, not . . . well, I lived in Colorado for three years and I was in the army for a year.

SEITZ: Judge, I'd guess six weeks.

COURT: Well, we could probably almost do it on Law Day. No, that's only a month isn't it?

BALDWIN: That's December. You won't be back here until . . .

COURT: Gentlemen, the other thing I know is when I get that report in, we'll try to agree upon a mutual

agreeable date, possibly we could do it on Law Day . . . [17] If not, we'll do it ah . . . some other time. Now, I'm wondering why, if it works out that way, we couldn't do it while . . . while I was in Moniteau County, which would be a heck of a lot closer.

ENG: I'd have no objection.

COURT: Come down just to California. Unless Mr. Baldwin wants to come up.

ENG: Mr. Baldwin doesn't want to.

COURT: Now, it may not even work out, I'm just suggesting it because it'll depend on when I get the report back then we'll see where I'm going to be when.

BALDWIN: You have more time up at Moniteau than you have down here, too.

COURT: May or may not. I won't on . . . I won't on Law Day, I can tell you that.

BALDWIN: I certainly have no objection to that Your Honor.

COURT: I don't guess we need all this on the record. Anything further in this case at this time?

BALDWIN: No, Your Honor.

COURT: All right. Presentence investigation will be ordered.

* * *

Thereafter on April 13th, 1977, the above entitled cause came on regularly for hearing before the [18] Honorable DEAN WHIPPLE, Judge of Division II of the 26th Judicial Circuit, at Lebanon. The following was held:

(Defendant's Exhibit 1 marked, being a psychological evaluation, 10/12/76, Nicholas James Romano, by Sheldon Silk, M. D.)

(Defendant's Exhibit 2 marked, being an affidavit signed by Peter Paul Clark.)

COURT: Court will call case number 2437, State of Missouri versus Nicholas James Romano. Gentlemen, heretofore on November 15, 1976, the defendant appeared here with his counsel and entered a plea of guilty and a presentence investigation was made, was ordered and it has been received and I believe copies have been available or have been read by defense counsel and State, is that correct?

ENG: Yes, Your Honor.

BALDWIN: That is correct.

SEITZ: That's correct.

COURT: All right, is there any further statement or proceedings on this matter before the Court pronounces sentence?

BALDWIN: On behalf of defendant, Your Honor, we would wish to present a small amount of ah . . . testimony with regard to the defendant's position and request for parole.

[19] COURT: All right. You may do so.

BALDWIN: Mr. Romano, would you stand and face the Court and raise your right hand to be sworn please.

(NICHOLAS JAMES ROMANO DULY SWORN BY CIRCUIT JUDGE, DEAN WHIPPLE)

ROMANO: I do.

COURT: Would you have a seat in the witness chair please.

BALDWIN: Your Honor, before we start interrogation of this witness, by agreement of counsel we would like to offer into evidence ah . . . Defendant's Exhibit One, which is a psychological evaluation rendered by Sheldon Silk, dated October 12, 1976. We further would introduce Defendant's Exhibit 2, which is an affidavit of Peter Paul Clark. Ah . . . Mr. Seitz, representing the State of Missouri

has been afforded the opportunity to inspect both of these Exhibits and it's my understanding that he has no objection to introduction of these documents into evidence at this time. Is that correct Mr. Seitz?

SEITZ: That is correct, Your Honor.

COURT: All right.

BALDWIN: So, at this time, we would offer Defendant's Exhibits 1 and 2.

COURT: Defendant's Exhibits 1 and 2 will be admitted.

[20] DIRECT EXAMINATION BY BALDWIN

Q. Would you state your name for the Court please? A. Nicholas James Romano.

Q. What is your age, Mr. Romano? A. 29.

Q. And what is your date of birth? A. April 4, 1948.

Q. You were just recently 29 then, is that correct? A. That's correct.

Q. I'd like to direct your attention Mr. Romano, to the 10th day of December of 1974 and ask you whether or not you were arrested on that date for the offenses before which you are charged in this Court? A. On December the 10th.

Q. Of 1974, is that correct? A. That's right.

Q. At the time of your arrest can you describe for the Court the type of employment which you had? A. I was working with my stepfather and mother in a cleaning business that my stepfather owned.

Q. For how long had you been so employed? A. Approximately two years. 3 . . . 2, 3 years.

Q. Now, after your arrest on these charges on December 10, 1974, can you described for the Court the type of employment that you had after that, from December 10th, [21] 1974 to the present time? A. Ah . . . after

this incident, I started working for a friend of mine at a bar in Columbia.

Q. Who is the friend? A. Mike Atkinson.

Q. What is the name of the bar? A. The Stein Club.

Q. How long have you worked at the Stein Club in Columbia? A. Approximately 9 months.

Q. What employment, if any, in addition to employment with the Stein Club have you had during this 28 month period? A. Just with my parents.

Q. All right. Describe for the Court the type of employment you have had with your parents? A. Well. I worked in the cleaners and after my stepfather sold out and retired, he bought real estate in Columbia and I worked with him in that?

Q. Can you describe for the Court what type of work you did with your stepfather in this ah . . . property business that he had? A. Well, we do maintenance mostly.

Q. What type of property is it that he owns? A. Ah . . . rental property.

Q. Are you at the present time still working with your stepfather? [22] A. Yes, I am, yes.

Q. And what is your particular function with regard to this property? A. Well, I just work with my parents?

Q. What type of work do you do? A. Maintenance.

Q. Repairing faucets and light bulbs and so on? A. Correct.

Q. Can you tell the Court whether or not you have any other employment other than your employment at the Stein Club and with your stepfather? A. None.

Q. Have you, since December 10, 1974 been employed as a bartender in any other establishment in Columbia? A. I worked for two other friends, but they're trying

to sell their bars, so I just decided to spend most of my time at . . . at the other bar.

Q. How long did you work for these two other friends? A. Approximately 6, 7 months.

Q. When is the last time that you worked for them? A. Oh, probably 3 . . . almost a month ago, three weeks to a month.

Q. Almost a month ago. Tell the Court the names of these friends? A. Mr. John Jones and Mr. Michael Eng.

[23] Q. And what was the name of the establishment which they owned? A. Gladstone Bar in Columbia.

Q. That's in Columbia? A. Yes.

Q. And so at the present time you're working for the Stein Club as a bartender and you're also employed by your stepfather in the management and operation of rental property in Columbia, is that correct? A. Right, right.

Q. Mr. Romano, since the 10th day of December, 1974, can you tell the Court whether or not you have been arrested on any charges of any kind? A. I ran a stop sign. I've had a stop sign violation.

Q. Is that the only arrest you've had since December 10, 1974? A. Yes.

Q. When did this arrest occur? A. Approximately 2 months ago, a month ago.

Q. You've had no arrest for a felony or any other misdemeanor since December the 10th, 1974, is that correct? A. None.

Q. Concerning your arrest record on the presentence investigation report that was filed, Mr. Romano, it [24] shows that on the 6th day of December of 1967, you were arrested for possession and charged and a fine of $50 plus

cost. Can you tell the Court what substance or what commodity it was that you were arrested for possession on? A. Oh, it was something that I found on the street. I'd parked my sister's car and ah . . . looked down, picked this bag up and ah . . . realized that it was nothing but waste, threw it back down and before I knew it there was a policeman arresting me for possession of mariquana.

Q. And that's what the charge was, possession of marijuana? A. Right.

Q. And that was in 1967? A. 60 . . . yeah.

Q. December the 6th of '67? You've not been convicted of any other offense related to drugs or possession or sale other than that one conviction of December 6th, 1967, is that correct? A. Correct.

Q. Can you describe for the Court what type of work you do, what your actual jobs are . . . ah . . . in your employment with the Stein Club? A. Bartender.

Q. And that's basically all you do is tend bar and mix [25] drinks, provide drinks to the waiter or waitresses? A. Well, we . . . we ah . . . check ID's at the door at times. Ah . . . we clean up, just whatever needs to be done.

Q. I see. Approximately how many hours a week do you work at the Stein Club? A. I would say 35, usually.

Q. And what hour rate of pay do you receive for your work there? A. $3.25 an hour.

Q. Is that the same wage which you've received throughout the time of your employment there or has . . . have your wages increased since you started? A. They . . . they've increased.

Q. What figure did you start? A. I think around $2.50 an hour.

Q. All right. Approximately how many hours a week would you estimate you devote to work with your stepfather at the real property that he owns? A. I'd say roughly 25 hours, usually.

Q. With regard to the hearing that we are having today, Mr. Romano, you understand, do you not, that the purpose of this hearing is to assist the Court in sentencing you on the charges to which you've already pleaded guilty? A. Yes, sir.

Q. Now, if the Court would see fit to grant you probation in [26] this particular case. Can you tell the Court whether or not you feel that you can live up to the terms and condition of any probation that might be granted you? A. Oh, I feel that I could ah . . . I would like the chance to prove myself like I have over the last two and a half years since this incident happened.

Q. You are asking the Court then to grant you probation, to give you the opportunity to provide yourself a useful and worthwhile citizen, is that correct? A. If they would, yes.

Q. You may inquire.

CROSS-EXAMINATION BY SEITZ

Q. Mr. Romano, before you entered your plea of guilty, were you aware of what my recommendation was going to be? A. Ah . . . I had a pretty good idea of how you felt.

Q. Were you informed that I would be recommending 10 years in Missouri Department of Corrections and being opposed to probation? A. I felt that way.

Q. In other words, you knew that was going to be my recommendation? A. I had a good idea, yes.

Q. Now, these two incidents that you pled guilty to, is the presentence right or is it correct when it refers to [27] 26 pounds of marijuana? A. That's what it says, yes.

Q. Well, is that what it was? A. Yes.

Q. No further questions, Your Honor.

COURT: Anything further?

BALDWIN: No further questions, Your Honor. You may step down, Mr. Romano. Defendant would call Mr. Atkinson to the stand.

(MR ATKINSON DULY SWORN BY CIRCUIT JUDGE, DEAN WHIPPLE)

ATKINSON: I do.

COURT: Would you have a seat please.

DIRECT EXAMINATION BY BALDWIN

Q. Would you state your name to the Court please? A. Mike Atkinson.

Q. Where do you live, Mr. Atkinson? A. In Columbia, in Highland Park.

Q. What is your occupation? A. I own the Stein Club.

Q. Are you acquainted with the defendant in this case, Nicholas James Romano? A. I am.

Q. For approximately how long have you known him? A. Oh, probably for about 17 years or so.

Q. Can you describe for the Court what, if any, business [28] relationship you have with Mr. Romano? A. Well, he's worked for me for the past 9 or 10 months.

Q. And what ah . . . business capacity has he worked for you? What has he done for you? A. Ah . . . he works at the bar. He's the bartender.

Q. At the Stein Club, is that correct? A. Yeah, that's correct.

Q. With regard to the time that Mr. Romano has worked for you, can you describe for the Court what his duties are in fulfilling his job occupation? A. Well, it varies from night to night. Sometimes he may check ID's.

He may bartend, mainly bartends though, but they switch off.

Q. There are more than one employee working on a particular shift, is that correct? A. Oh yeah, yeah.

Q. Can you tell the Court whether you're personally present at most times during the operation of the business when it's open for business? A. Yes, I am, yes.

Q. Have you had the occasion to observe Mr. Romano in functioning or carrying out of his duties for you? A. Un huh, I do.

Q. Can you tell the Court, if you will, what type or what kind of employee you feel Mr. Romano is? [29] A. I feel that he does a real fine job.

Q. At what salary or wage do you start Mr. Romano? A. $2.50 per hour.

Q. And what is his present wage? A. $3.25 per hour.

Q. During the approximately 9 or 10 months that he has worked for you, do you have any records which you brought with you which would indicate the amount of income which you have paid him for this employment? A. Yeah, I do.

Q. Ah . . . can you refer to those records . . . records, and advise the Court as to the amount of income which Mr. Romano has earned as an employee of yours at the Stein Club? A. Well, I looked at them earlier and it's been about approximately $1,600.

Q. This would be for the year of 1976 or to date? A. Up to date.

Q. And this would be approximately $1,600 during this 9 to 10 month period? A. Right.

Q. Is that correct? A. That's correct.

Q. During the time that Mr. Romano has worked for you, can you tell the Court whether or not there were

any things [30] that you have observed about him or about the manner in which he conducts himself that has caused you any concern? A. No, ah . . . he does, you know, like I said, he does a good job, you know. He's . . . he's conscientious about his work and he's never been any problems.

Q. Do you feel that you would be in a position to give him a good recommendation if he sought employment elsewhere? A. Oh yeah, definitely.

Q. No further questions.

CROSS-EXAMINATION BY SEITZ

Q. You weren't present or aware of this transaction that occurred on December the 5th, 1974 were you? A. No.

Q. No further questions, Your Honor.

BALDWIN: One further question.

REDIRECT EXAMINATION BY BALDWIN

Q. Mr. Atkinson, you've described the operation as a bar. Can you tell the Court the type of clientele that serve . . . you serve in this bar? A. Well, it's . . . a lot of it's college crowd.

Q. Pardon me, go ahead? A. You know . . . they just you know, 21 probably to 30. You know, there's some local people.

[31] Q. What would you estimate the average age of your customers to be? A. Oh, 24 or 5 I would say.

Q. No further questions.

SEITZ: No recross, Your Honor.

COURT: Thank you, you may step down.

BALDWIN: Your Honor, the testimony that has been presented on behalf of the defendant with the two witnesses ah . . . testifying from the witness stand together with Defendant's Exhibit 1, being the psychological evalua-

tion rendered by Sheldon Silk, Defendant's Exhibit 2, being the affidavit of Mr. Clark, basically concludes the actual evidence that ah . . . defendant wishes to present at this time. However, we would like to make some additional comments ah . . . to the Court if it's appropriate at this time.

COURT: You may do so.

BALDWIN: The first thing that I'd like to point out to the Court is the fact that the defendant has just turned 29 years of age, that throughout the 28 months which has transpired since he was arrested and charged, the . . . the offenses which he's already entered a plea of guilty. He was a single man of relatively young age. The record will reflect that this is a first offense situation. He has no previous record of [32] any ah . . . felony convictions and I think this is important to point out to the Court. I think one thing which is extremely important for the Court to consider ah . . . in reaching it's decision concerning the sentencing of this defendant is the fact that since the time that he was arrested for these charges on the 10th of December of 1974, he has been totally ah . . . "clean" so to speak. He's had no conflicts, no trouble with the law, with the one exception of a minor traffic violation which he received approximately 2 months ago. Ah . . . when you couple the age of the defendant with the first offense situation plus the fact that he has proven to himself, to his attorneys, and I think to almost everyone else, he's been able to continue to remain at large as a free and contributing member of society for 28 months without any further scrapes with the law. We feel this makes a . . . a very strong argument for the fact that he is a worthy candidate for probation on this particular charge. Now, the . . . the State . . . I don't know exactly whether the Court's aware

of this or not, I assume that the Court is. But, Mr. Seitz has asked the defendant on cross-examination whether or not he was aware of the State's recommendation of 10 years on this particular charge. At this particular point in [33] time, we would like to call to the Court's attention the sentencing which has taken place on similar charges in Boone County from where this case came on Change of Venue. Ah . . . and all that we're asking this Court to consider is that be some uniformity of sentencing for a similar offense. Now, the presentence investigation report, which was filed in this case at the Court's direction, referes in a frequent number of occasions to an individual by the name of Jenny Wise. And if the Court will recall, the ah . . . presentence investigation report, Jenny Wise is named as the individual who made the telephone call to set up or to arrange this particular ah . . . incident, the sale in question here to which the defendant has already entered his plea of guilty. Jenny Wise was present at the time the sale took place. Jenny Wise was not charged with any offense, although she is the one that was present and actually made the telephone call to get the matter set up. Now, Jenny Wise was arrested in Boone County on a similar charge, not the same ones in question here, but on a similar charge. Jenny Wise who is the daughter of a doctor, who is ah . . . high on the staff at the University of Missouri Medical Center, received a five year sentence plus probation for the charge. And we think that certainly the defendant [34] in this case is entitled to the same kind of consideration even though his father is deceased and his stepfather is retired. Merely because he's not a doctor at the Medical Center at the University of Missouri, Columbia, this should not mean that he should serve time in the penitentiary for a . . . the same offense which she only got

five years and was permitted probation on, is free and at large at this time. The Court . . . I'm also quite certain ah . . . is aware of the fact that there was an attorney in Columbia, Missouri by the name of Head, who was charged with embezzling approximately $41,000 from an estate, which ah . . . he was working with at the time. In that particular situation, the attorney entered a plea of guilty to the charge, was given a sentence of five years and again was placed on probation. In that particular case, Your Honor, ah . . . there was a victim involved. There was an incompetent whose estate was depleted by $41,000, a victim, someone who was injured by the criminal act. In this particular case, there is no victim. There is no victim. And again we point out to the Court that since there is no victim, since there was no one actually, physically, or monetarily injured by the wrongs, which the defendant has admittedly perpetrated ah . . . we think that this also [35] goes a long way toward trying to point out to the Court what type of sentencing, what type of probation is granted in Boone County, the county in which this particular case arose. Now, the presentence investigation report, which admittedly does not recommend probation, the presentence ah . . . investigation report as prepared and signed by ah . . . Officer William R. Small is in my opinion replete with innuendos, with insinuations, with nothing to back up some of the statements that are contained in this particular report. Ah . . . for example, ah . . . he said the only people who had a kind remark to say about the defendant were his employers. The question becomes one in my mind of who did the investigating officer contact. He talks about marijuana being grown in Wright County in Hartville and insinuates that this defendant was the individual who was responsible for this. But, I . . . I call to

the Court's attention that there has been no arrest, no charge, no conviction whatsoever concerning any elicit drug traffic or marijuana growing conducted or perpetrated by this defendant. Ah . . . we feel that the only people that the probation officer talked with were more than likely representatives of the police department in Columbia, Missouri, ah . . . who admittedly were interested in this particular case because of the [36] fact that their unit is the one that actually made the arrest and ah . . . were responsible for bringing the defendant to trial. Ah . . . we're saying basically, Your Honor, that this report, we do not feel, is substantiated by any kind of fact whatsoever. It's surmised, it's conjecture, and it's based strictly on opinion. On the other hand, we would call the Court's attention to Defendant's Exhibit No. 1, which is the psychological evaluation, which was rendered Sheldon Silk. Mr. Silk has talked to this defendant. He has spent time with this defendant and he says that this defendant is a good candidate for probation and I submit to the Court that Sheldon Silk is a much more qualified individual to make a psychological or mental determination concerning the capabilities of this defendant then is the probation officer who completed and conducted this particular report. Throughout the report, reference is made to problems which this defendant has experienced in the past concerning authority figures. And ah . . . it's right there and I'm not trying to overemphasize that fact. Sheldon Silk even admits in his evaluation that yes, in the past the defendant has had some conflicts, some internal problem in ah . . . getting himself reconciled with authority figures. But, I submit to the Court that if this defendant has been out on bond and [37] been free to move about in society for 28 months and has not had any kind of

confrontation with the law on any kind of a serious offense other than running a stop sign, then I submit that I . . . that the problem, if any, which this defendant had concerning authority figures has certainly been resolved. And I would further say that if there is an authority figure problem, the thing to do is not put this individual behind bars somewhere where the only people that he can relate to are authority figures. I think that that in and of itself is self-defeating and I think that ah . . . the fact that the long period of time that's transpired without a problem certainly would show the Court that this defendant no longer has any kind of a problem as far as authority figures are concerned.

Now, finally the last thing that I would like to mention to the Court ah . . . is that I have personally known this defendant from the time he was about this tall. Coming from Columbia and that's the same place that Mr. Romano is from, ah . . . I've known him from the time he was just a young kid and based upon my personal knowledge of him, my personal knowledge of his background and his family situation, ah . . . I personally feel that he is also a good candidate for probation in this particular ah . . . matter. He's already admitted to [38] the Court that he is guilty of the offense with which he stands charged before the Court. He's asking the Court for the opportunity to prove to other people other than just himself that he can remain a member of society, be a good useful, worthwhile citizen in his community and I think he certainly has demonstrated that to himself as well as to all other individuals who have been in contact with him, because of the fact that for 28 months he has gone straight. He has had no problems with the law. And I think that of course this is something which the Court should take

into consideration and we would respectfully request the Court to take into consideration. Thank you, Your Honor.

ENG: Your Honor, before Mr. Seitz replies, can I make a brief, very brief statement? Ah . . . is . . . as the record will show, I've been the attorney for Mr. Romano the entire 28 months and I just wanted the . . . the Court to know that if it should consider probation for Mr. Romano that I would personally . . . I . . . I am in Columbia with . . . with him and I would personally make myself available to the Court, to probation, parole, and to Mr. Romano to assist him in any way to see that he helps make good on his probation, whatever the Court or probation and parole would require of him. Of course, assuming that the Court would go that way. And I've [39] known him also, Your Honor, for . . . since 1960, which is approximately 17 years and I concur with Mr. Baldwin that I also think he's the candidate for probation. Thank you.

COURT: Thank you Mr. Eng. Mr. Seitz.

SEITZ: If it please the Court. Your Honor, in this case the State's recommending a sentence of 10 years on each count to be imposed and be served in the Missouri Department of Corrections and to run concurrently. Ah . . . I think we've heard some good remarks here today, but I don't believe we should completely put aside what occurred back on December the 10th, 1974. Ah . . . reading the charge, we have a transfer of marijuana and sale of marijuana. The Court's aware of the pre-sentence and we weren't talking about a lid or a pound. We were talking about trading 25 pounds of marijuana for half an ounce of heroin. We're talking there in terms of three thousand-thirty-two hundred dollars. We're talking about a pound of marijuana that was sold for a hundred dollars.

Mr. Baldwin ah . . . pointed out two other cases and I think Mr. Baldwin would agree with me that in any jurisdiction in any case it's based on its own merits. You can't say, well this is the way one occurred and this is the way it should be done in all of those. For the Court's information, the cases involving heroin in Boone County [40] ah . . . the three in which I've penciled down here, the sentencing was 14 years, 15 years, 10 years. True, this is not a heroin case, but the Court's aware of the presentence and the whole thrust of the trade was to acquire it, a half an ounce of heroin. Ah . . . he also talked about the Wise case and the Head case. In the Wise case ah . . . the State in that case did recommend the penitentiary sentence of five years and was opposed to probation. She was placed on probation. It concerned a five pound transaction. Ah . . . for the Court's own information, we were much opposed to probation in that case, but she was granted it and that's the disgression of the Court and so be it.

In the Head case as he pointed out, there was restitution of like $43,000. Ah . . . this was not something that was as far as whether he went to the penitentiary or not. This was not something that was thought of and decided over night. Ah . . . the estate of the elderly lady was . . . had been declared incompetent, was conferred with as well as her sons and daughters. And they all agreed, as a matter of fact that statement was made in open court, that they requested the Court to place the individual on probation in the condition that he make full restitution. In that case I think justice was done.

[41] Today, I think justice will be done for the State of Missouri with a ten year sentence. Ah . . . if there's to be mercy, there's always times for that and that can

come later. But, right now I'm requesting that the Court impose a ten year sentence and order execution of that sentence. Thank you, Your Honor.

COURT: Anything further?

BALDWIN: Nothing further Your Honor, on behalf of the defendant.

COURT: Mr. Seitz, what's the full range of punishment on this offense?

SEITZ: The range of punishment, Your Honor, is a minimum of five years to a maximum of life imprisonment.

COURT: Mr. Baldwin, you asked the defendant some questions about this . . . December . . . this $50 fine and cost for possession. Do you know where that took place?

BALDWIN: The presentence investigation reports, Your Honor, shows that this information came from the records in Boone County and I would assume that that's the place where it occurred, in the Boone County Prosecuting Attorney's office.

ROMANO: There was no conviction on that. That was dismissed. This particular case.

BALDWIN: Where did it take place?

[42] ROMANO: Boone County.

COURT: Now this 12/6/67 possession substance unspecified, $50 and cost. Where was that? Isn't that the one . . .

BALDWIN: That's the one I asked about Your Honor.

ROMANO: This was in California.

BALDWIN: The state of California?

ROMANO: The state of California. See I misunderstood you, I thought you meant this one that was dismissed.

BALDWIN: So the one that you testified to . . . .

ENG: 11/23/73.

BALDWIN: Rather than 12/6/67, Your Honor. But this charge . . .

COURT: But what's this 6/8/72 possession, no disposition? Where did that take place?

BALDWIN: You have no recollection of that charge? Is that your statement?

ROMANO: No.

COURT: Well, now, which one . . . Mr. Romano, which one were you talking about that you said you were charged and paid a fine on, for picking up the packet and then dropping it?

ROMANO: In California, the first one, Your Honor.

COURT: All right.

[43] ROMANO: It was in Lagoona Beach. We were on the beach and we were asked to pay a fine and leave the state of California.

SEITZ: Your Honor, 6/8/72 was when Mr. Romano was arrested on ah . . . Broadway about 1:30 a.m. in the vicinity of his sister's car and was charged with possession of marijuana of less than 35 grams.

ENG: Okay, and you show no disposition of that since the 11/23/73 entry is the dismissal of that charge.

ENG: Okay.

BALDWIN: Good, okay.

ENG: So then those two are together. That's all one incident?

SEITZ: That's correct.

COURT: Mr. Romano, you want to retake the stand a minute please.

ROMANO: Yes, sir.

DIRECT EXAMINATION BY COURT

Q. Mr. Romano, in regards to this report I received from probation and parole office, in that report they indicate they talked with you and you made a certain state-

ment to them as to where you got this 26 pounds of marijuana. Now, where do you say you got it? A. Down on the Missouri River near Esley, Missouri.

[44] Q. And you found it growing wild down there? A. Next to the river.

Q. All right. Did you do any refining of it? A. Very little. I mean, of course we had to ah . . . had to refine it a little bit in order to deliver it as it was delivered.

Q. How was it delivered? A. In 1 pound packages.

Q. Did . . . did you weigh it out in packages in that manner? A. Yes, sir.

Q. Did you block it? A. No, sir.

Q. You don't know any thing about this marijuana patch near Hartsville, Missouri, wherever that is? A. No, sir. This is the first I've heard of that.

Q. Stay right where you are for just a minute.

COURT: Mr. Seitz, what's your information concerning the condition of this marijuana at the time the exchange was made?

SEITZ: In talking with the chemist, Your Honor, ah . . . Mr. Baxter, who run the analysis said it was what would be considered a higher grade and that the tetrahydrocanobonal content was sufficiently stronger than ah . . . he said home grown. And also he termed it as being manicured, which I understand is picking of the [45] leaves from the stems and . . . because the stems have no tetrahydrocanobonal in it.

COURT: Now, Mr. Romano, is this your testimony that you picked this marijuana and packaged it yourself?

A. Yes, sir.

Q. You didn't buy it from anyone already packaged? A. No, sir.

COURT: All right. Any questions by defense counsel as a result of the Court's questions?

ENG: Well, Your Honor, we . . . we would of course submit that the evidence entered in this case that was used in the preliminary hearing should speak for itself. Like, I don't know, Your Honor, probably hasn't seen it, but it was in 26 one pound or approximately thereof ah . . . bags, plastic bags, ziplocked tight bags and that's . . . there is no denial of that fact at all.

COURT: Okay. All right, you may step down, Mr. Romano, Mr. Romano, you want to approach the bench, please.

(Defendant approaches bench with his counsel)

COURT: Mr. Seitz, you may approach the bench. Mr. Romano, I've labored with this case for some time as I do with any case where there's a possibility of [46] sending somebody to the penitentiary. At this time I'm going to advise you that it is my intentions to assess punishment against you of 20 years in the penitentiary and place you on parole for a period of five years and probably extend that for another five years for a total of ten years on probation with very strict rules. And a violation of any one of those rules will cause that parole to be revoked and you sent to the penitentiary. Do you understand me?

ROMANO: Yes, sir.

COURT: Now, knowing that I'm asking you if you wish to stand on your plea of guilty or if you wish to withdraw your plea of guilty and stand trial.

ROMANO: I would like to stay with my plea of guilty and try to prove myself to you and the Court.

COURT: All right. Mr. Romano, I will advise you that on November 15, 1976, you appeared before this Court and entered your plea of guilty to count one and count two of an Information charging you, I believe with possession and transfer of marijuana, is that correct?

SEITZ: Sale and transfer.

COURT: Sale and transfer of marijuana. The Court at that time after examining you under oath determined that your plea of guilty was entered into by you [47] understandingly, knowingly, and voluntarily, and the Court accepted your plea of guilty and ordered a presentence investigation. Do you remember that?

ROMANO: Yes, sir.

COURT: Now, that presentence investigation, of course, has been returned. There's been testimony on it ah . . . by various individuals including yourself today. Now, you've been advised of what the Court's intentions are in this case. I'll first ask you, are you satisfied with the representation by your attorneys, Mr. Eng and Mr. Baldwin of you on this case?

ROMANO: Very much so, Your Honor.

COURT: Do you know of any legal reason why judgment and sentence should not be pronounced upon you at this time?

ROMANO: No, sir.

COURT: Allocution as to counts one and two. It is the judgment and sentence of this Court that the defendant be transported to the reception center of the Missouri Department of Corrections in Jefferson City, Missouri there to be kept and confined in an institution or institutions to be designated by said Missouri Department of Corrections for a period of 20 years unless sooner discharged according to law.

All right. That's your sentence on count one. On [48] count two, do you know of any legal reason why judgment and sentence should not be pronounced upon you on count two?

ROMANO: No, sir.

COURT: Allocution on count two. It is the judgment and sentence of this Court that the defendant be transported to the reception center of Missouri Department of Corrections in Jefferson City, Missouri there to be kept and confined in an institution or institutions to be designated by said Missouri Department of Corrections for a period of 20 years unless sooner discharged according to law. Said sentence to run consecutive with and not concurrent to the sentence pronounced on count one of this same file.

Now, Mr. Romano, I'm going to place you on probation under supervision of Missouri Department of Probation and Parole for a period of five years, because that's the maximum time I'm permitted to place you on probation on at any one time. And, I've cautioned you that you may consider having been on probation, an additional five years. That is not saying absolutely that I will do so. Now, the reason I have considered placing you on probation is because this is an offense you have committed in possessing and selling and not an offense against the body or person of another [49] individual, involving another individual. It appears you have an uphill run on this probation. First of all because the Department of Probation and Parole are not convinced you can make it and secondly, because your past track record is not too good.

Now, the express terms and conditions of your parole, are as stated in the report that you shall submit to a drug screen test on demand and at your expense at any time you're requested to do so by a probation and parole officer of the Missouri Department of Probation and Parole. That you be restricted, that you are restricted to the Boone County area unless you obtain prior permission from your probation and parole officer to leave Boone County, Missouri and that means even for a vacation.

ROMANO: Yes, sir.

COURT: Do you understand me?

ROMANO: Yes, sir.

COURT: Number three is that your person and property shall be subject to search at any time by any probation officer and also by any law enforcement officer of Boone County including members of the highway patrol. Do you understand that?

ROMANO: Yes, sir.

COURT: Now, Mr. Romano, if I get any report back [50] that you have refused any of these items I will consider it a violation of this parole. Do you understand me?

ROMANO: Yes, sir.

COURT: At that time, I will issue a warrant for your arrest and order you held without bond until we can have a parole revocation hearing and if at that hearing it is proven that you did refuse to do any of these prescribed items or any of the general rules and conditions of a parole that are prescribed by Missouri Department of Probation and Parole, then you can anticipate that I will terminate this parole and order you transported to the reception center of the Missouri Penitentiary in Jefferson City to serve 20 years, do you understand me?

ROMANO: Yes, sir.

COURT: Now, the reason for the sentence above . . . the recommendation, of course is that I'm placing you on parole plus the fact that I expect you to live up to the terms and conditions of the parole and I wanted you to be aware of the consequences if you did not. And do you understand what I consider the consequences to be if you do not?

ROMANO: I do.

COURT: Now, do you have any questions at all at [51] this time about this parole and probation?

ROMANO: No, sir.

COURT: Now, do you understand besides these specific points that I've spelled out that there will also be general terms and conditions of your parole gone over with you by your probation officer? The original intake officer is here today and you need to talk with him and of course he will transfer your paper work to Columbia.

The only other problem that's concerning me is . . . is ah . . . where you work, but I suppose I'll let the probation and parole people work that out with you. In other words, voluntary intoxication may lower your resistance to decide you might need to inbibe in the drug scene again. If it does, don't come and expect voluntary intoxication to be an excuse, because it will not be. Do you understand?

ROMANO: Yes, sir.

ENG: Your Honor, I think as a practical matter, it would probably be . . . since now he's a felon, he probably won't be able to work there either. We've been anticipating that, so he hasn't been counting on continuing his employment there.

COURT: Is that the normal rule in terms of conditional . . .

[52] ENG: The liquor commission will not allow him to work there. They'll close the place down.

COURT: Okay, I guess that's solves that problem for us, Mr. Romano. All right. Any questions to this point about what has transpired here on this case? If you got any apprehension, anything you need to clear with me, you better do it now.

ROMANO: Ah . . . on the similar case with the case they were talking about, Jenny Wise case, she was granted to work in a bar. If . . . if that's granted would that be all right with you?

COURT: It's all right with me if you can work it out with the Probation and Parole Board.

ROMANO: Okay.

COURT: But, it's at your risk.

ROMANO: Working there keeps me away from it.

COURT: I don't see how she can work there if the liquor control people say they'll shut it down, but that's not my problem.

ROMANO: They did do it though, and that's why I wanted to ask you the question about it because it did happen.

COURT: All right. When this probation officer goes over the terms and conditions of your parole, you better listen to him, because I think one of those [53] conditions is that you can't associate with other felons and that includes this Jenny Wise, because she is a convicted felon.

ROMANO: I understand.

COURT: And I don't know who some of your other associates are, but listen to those rules very carefully, because they're going to be the difference whether you become a resident of Boone County or a resident of Cole County in the penitentiary. Do you understand me?

ROMANO: I do.

COURT: Mr. Baldwin, do you have any questions?

BALDWIN: No questions.

COURT: Mr. Eng?

ENG: No questions.

COURT: All right. I'm taxing the cost of this action to you. You'll be given a reasonable time to pay them.

ROMANO: Thank you.

COURT: You may step aside to the parole officer.

(COURT RECESSED AT 3:02 P. M.)

(COURT RECONVENED AT 3:04 P. M.)

COURT: Mr. Romano, it was brought to my attention that I imposed those two sentences to run consecutive, which means one after the other and I did [54] not intend to do that. I intended to run them concurrent at the same time so that you will serve both sentences at the same time or a total of 20 years. Do you understand?

ROMANO: Yes.

COURT: The resentencing on that?

ROMANO: Yes.

COURT: And I will so make my docket entry to read that. Do you understand that?

ROMANO: Yes.

COURT: All right. I needed to call you back and advise you.

ROMANO: Thank you.

COURT: You may step aside again.

* * *

Thereafter on the 18th day of July, 1977, the above-entitled cause came on regular for hearing before the Honorable DEAN WHIPPLE, Judge of Division II of the 26th Judicial Circuit, at Lebanon. The State of Missouri was represented by Mr. Earl F. Seitz, Assistant Prosecuting Attorney of Boone County. The defendant was present in person and was represented by his attorneys, Mr. Patrick J. Eng and Mr. James E. Baldwin.

* * *

COURT: Gentlemen, Court will call case number [55] 2437, State of Missouri vs. Nicholas James Romano. This is a revocation hearing. Is the State ready to proceed?

SEITZ: The State's ready, Your Honor.

COURT: Is defense ready to proceed?

ENG: Ready to proceed, Your Honor.

COURT: Are there preliminary matters we need to take care of?

ENG: The only thing I have is a subpoena. I'd like to . . . state subpoena, but I wasn't sure whether they got him served.

COURT: All right. I'll show this subpoena filed. Before we start to take testimony on this case, I need to ask the defendant. You are Nicholas James Romano, is that correct?

ROMANO: Yes, sir.

COURT: And your represented by Mr. Eng and Mr. Baldwin, is that correct?

ROMANO: Yes, sir.

COURT: Mr. Eng, do you acknowledge at this time that you had a preliminary on this case and a written find of that hearing was served on your attorney? You may answer for him, Mr. Eng.

ENG: I acknowledge that, that one was held, yes sir.

[56] COURT: All right. Was there a written finding served and made available to you?

ENG: Yes, sir. We received a copy of it.

COURT: All right. Anything further we need to do before we start taking testimony?

BALDWIN: At this time Your Honor on behalf of the defendant we would request that all witnesses be excluded according to Supreme Court rule.

COURT: That would be permitted. At this time the rule for exclusion of witnesses is being invoked by the Court. Any individuals who have been subponaed to appear as witnesses or who anticipate appearing as witnesses must remove themselves from the courtroom and

stay outside the hearing of this case until they are called to testify and then again remove themselves unless they are finally discharged. So, if you have been subpoenaed or if you think you're going to be called to be a witness, please step aside at this time. We'd instruct the attorney to assist the Court in seeing that these witnesses stay outside of the hearing of the case.

All right. The State may proceed.

SEITZ: Call Mr. Bradley to the stand.

(MR. BRADLEY DULY SWORN BY CIRCUIT JUDGE, DEAN WHIPPLE)

BRADLEY: I do.

[57] DIRECT EXAMINATION BY SEITZ

Q. Would you state your full name for the Court please? A. Timothy Nesbeth Bradley.

Q. And where do you reside, sir? A. Ah . . . 205 College, Columbia, Missouri.

Q. Sir, if I could, I'd like to direct your attention to the 15th day of June, of this year ah . . . in the early morning hours and I'd ask where you were, sir? A. I was ah . . . working at the Stein Club.

Q. And did you remain at the Stein Club until it closed that evening? A. Yes, sir.

Q. After the Stein Club closed down, what did you then do, sir? A. Ah . . . I was standing outside ah . . . waiting around for my roommate to see what we were going to do after work.

Q. And did your roommate come up to you? A. Ah . . . he was sitting on the curb. I was talking to him.

Q. Were you by yourself or were there other people in the areas or . . . A. Oh yeah, there was a lot of people in the area.

Q. Now, that's ah . . . the Stein Club. For the Judge's information, would you tell him where that's located at?

[58] A. Ah . . . 7th and Broadway. Ah . . . it's on ah . . . I guess it'd be ah . . . front side is facing north and the back side is facing south. Ah . . .

Q. It's right in downtown? A. Yeah, it's down in the main, on Broadway, the main street.

Q. Then while you were waiting for your roommate, what were you doing sir? A. I was just setting there talking?

Q. Did you finally decide to leave or were you going to leave? A. Yes. We ah . . . nobody was going to do anything, so I said to my roommate, let's go home.

Q. What did you then do, sir? A. Ah . . . I turned around to my left.

Q. Now, where were you positioned ah . . . just before you decided you were going to leave? A. I . . . I was standing beside . . . in front of the Stein Club facing the front.

Q. Were you on the street or up on the sidewalk? A. I was in the street.

Q. Is . . . can you describe the parking there? What's it like? A. Ah . . . it's not parallel parking, it's diagonal like and then they got . . . it's a four lane street with diagonal [59] parking on both sides and our car was parked across the street from where I was and I had my back to our car.

Q. So then you started to leave? A. Un huh.

Q. Would that have meant you were going across the street? A. Yeah, I turned to my left and started walking across the street. It'd be north and ah . . . started saying good-bye to people.

Q. And then what was the next thing that happened? A. Ah . . . I saw two lights and woke up in the middle of the street.

Q. Did you . . . were you struck? A. Yes. Ah . . . I was hit by a car at least, you know, alls I saw was two head lights and then ah . . . then the next thing I woke up and people were, you know, running around screaming and stuff and I really didn't know what was going on cause I was, you know, knocked out and stuff, so I didn't know what happened.

Q. Were you able to see this car that hit you? A. Ah . . . I just saw . . . it . . . it was a streak. It was just two lights, cause I . . . I was caught off guard. I was facing the other way and ah . . . I turned, I saw two head lights and I . . . I guess I started to move out of the way, but it hit me. You know, so I didn't . . . I [60] didn't really get a look at anything, cause it came from my ah . . . left side and I was facing the right.

Q. Then what's the next thing that you remember, sir? A. Ah . . . waking up in the street and paramedics were working on me and ah . . . people were saying I got hit by a car.

Q. Then?

ENG: I object to that Your Honor as to what . . .

COURT: Overruled.

ENG: Hearsay.

COURT: Overruled.

Q. (By Seitz) And were you taken to the hospital, sir? A. Yes.

Q. Did you remember that? A. I remember ah . . . bits and pieces ah . . . I remember Terry Dehaven was sitting in the car . . . in the ambulance crying saying, you'll be all right. And I . . . next . . .

ENG: I'll object to anything that Terry Dehaven might have said, Your Honor.

COURT: What basis?

ENG: What basis?

COURT: On what basis?

ENG: On the basis that it's hearsay testimony.

COURT: Sustained.

A. (By Bradley) And ah . . . then I remember them doing like they [61] were casting my leg and then . . . then the part I remember was when they were stitching up my face and that was kind of painful, so I stayed awake for that. And ah . . . then about 8:30 they sent me up to a room and there was a detective sitting there asking me questions and it was . . . I just didn't really know what was going on. I was kind of in and out.

Q. What type of injuries did you sustain from this?

ENG: Your Honor, I'm going to object to that as being irrelevant.

COURT: I would permit some preliminary testimony. I don't want to go into it extensively.

Q. (By Seitz) Just what . . . briefly, what injuries? A. Broken leg, dislocated shoulder and some stitches.

Q. I have no further questions, Your Honor.

COURT: Thank you. You may cross-examine.

CROSS-EXAMINATION BY ENG

Q. Mr. Bradley, which . . . you have several roommates, do you not? A. Yes.

Q. Which one were you waiting for? A. Jack Nicholas.

Q. Okay. Does he work at the Stein Club too? A. Yes, he does.

Q. Was he working there that night? [62] A. Yes, he was.

Q. Were any of your other roommates there at the Stein that night? A. Ah . . . both of them were, I think. I'm not sure.

Q. Who are your other roommates? A. Craig Vogel and Greg Fallon.

Q. They both were there? A. Well, it was really crowded on Tuesday nights and I'm sure they were there. I can't remember if I saw them or not, because we were really busy.

Q. At the time just prior to your being struck ah . . . were you intoxicated? A. Ah . . . no, sir, I wasn't drunk. I had had a few drinks, but I wasn't drunk, because we were working.

Q. And you had had a few drinks. How many drinks had you had? A. I'd say ah . . . I had one bottle of Heineken and about two shots of Snobbs.

Q. Ah . . . where were you in the street at the time you were struck? A. When I was struck?

Q. Un huh. A. Ah . . . I was . . . I really just can't say, because ah . . . it happened so quick. I'd . . . some people say I was out further and some people say I was closer. I . . . I just [63] talked to him and I'd started walking and then I was like saying good-bye to people and the next thing I know I was . . . I got hit.

Q. Did this car hit you directly headon? A. No. It hit me . . . I was walking . . . I caught it out of my eye . . . the corner of my eye and I turned and then I got hit. I didn't . . . it happened so quick.

Q. Do you know if it knocked you away from where you were standing or whether it just knocked you straight up in the air or what? A. Well, I . . . from where they say I landed, it knocked me away or back in towards . . .

Q. You testified earlier that you landed in the middle of the street, is that correct? A. I never said that.

Q. Where did you land? A. Ah . . . right in front of the drugstore next to the Stein, they said, right next to the curb.

Q. Okay. A. I . . . I really couldn't tell you where I landed, cause I . . . I don't remember, you know. I was out and I don't know.

Q. Mr. Bradley, you don't have any idea who the driver of the car that struck you was, do you? A. No. No, sir. I didn't see anybody.

[64] ENG: That's all. Thank you.

SEITZ: Nothing on redirect, Your Honor.

COURT: All right. You may step down. Mr. Bradley you need to stay outside the courtroom.

BRADLEY: Okay.

COURT: Call your next witness.

SEITZ: Terry DeHaven.

(TERRY DEHAVEN DULY SWORN BY CIRCUIT JUDGE, DEAN WHIPPLE)

DEHAVEN: I do.

COURT: Would you have a seat in the witness chair, please.

DIRECT EXAMINATION BY SEITZ

Q. Would you state your full name for the Court please? A. Terry Willard DeHaven.

Q. Where do you reside, sir? A. Columbia, Missouri. Route 8.

Q. What is your occupation, sir? A. I work at the Stein Club as a bartender.

Q. If I could sir, I'd like to direct your attention to the 15th of June of this year. Did you work at the Stein Club on that date? A. I did, sir. From 9:00 that morning 'til 6:00 that night.

Q. Then after you had completed your hours or your work period there, what did you then do, sir? [65] A. I went to the other side of the bar and drank heavily all night long

Q. Now, did you remain there all night long? A. It was the later part of the night. I don't remember what time I left.

Q. Had you or did you see Mr. Romano in the bar that evening? A. I saw him in there that evening, yes.

Q. Was that after you were off work? A. Yes.

Q. Did you have a beer with him or two? A. Ah . . . I don't remember having a drink with him, but he was in there. I did see him.

Q. Now, when you got ready to leave, what did you do or where did you go? A. I went outside and ah . . . it wasn't time to close yet and I was outside by myself and I saw ah . . . Jim's car, what looked to be his car. It could have been someone else's. I was that drunk. I got in on the passenger side and passed out.

Q. Now, how did you know or how did you think this was Mr. Romano's car? A. It was a silver 240Z.

Q. Had you ever been in it before? A. He had given me rides home previous before that, after [66] working hours, cause he works out . . . lives out further past me on route B.

(State's Exhibit 1 marked, being a black and white photograph of a car.)

Q. Sir, I'm going to show you what's been marked State's Exhibit 1 and ask you to take a close look at it if you would. A. It looks like his car, yes.

Q. Is this State's Exhibit 1 . . . does that fairly and accurately depict the car that you got into that evening? A. Yes, from what I can remember.

Q. Other than the damage that you can now see on it? A. From what I can tell it looks like the car, yes sir.

Q. Okay. After you say you got into the car, did you leave the car or were . . . you say you passed out. Did you remain in the car? A. I did pass out. And

when I woke, I woke and the glass shattered and I had some glass on me and I got out of the passenger side and there was people running around screaming and hollering that someone was dead and I walked over to see the person and recognized it to be Monk, the guy that worked there and I'd worked with. And I stayed there with him from that time on and rode with him to the ambulance all the way to the [67] hospital.

Q. Is that Mr. Bradley, the person that previously testified? A. Correct.

Q. Now, do you know who was in the car with you? A. No, sir, I do not.

Q. But you were in the passenger side of the car? A. That's where I got out when I got out and everybody was running around in circles screaming and hollering somebody was dead.

Q. Now, where did this car go after you got out of it, sir? A. I have no idea. I was bent down with Monk holding his hand the whole time. I didn't even see it leave.

Q. Then I think you testified you went to the hospital with him? A. I did sir.

Q. Sir, after you arrived at the hospital, and a little while later, did you have a conversation with a Gary Saunders? A. No, I didn't.

Q. Did you talk to him at all at the hospital? A. I don't even remember seeing him. I don't think he was there, but I won't say for sure. I wasn't there long and the police came in and arrested me and took me down to the police station.

[68] Q. The next day did you talk to him at the hospital? A. Who's that?

Q. Gary Saunders. A. No.

Q. Are you telling me you never a conversation with him concerning this accident? A. Concerning this accident, no sir. I have not talked to him.

Q. No further questions, Your Honor.

COURT: Thank you.

CROSS-EXAMINATION BY ENG

Q. Mr. DeHaven, you said that the police arrested you? A. Yes, sir. They said I was under arrest for . . . I asked them what I was being arrested for and they said involuntary manslaughter, if I remember correctly.

Q. Did they . . . they had perceived that you were the driver of the car, is that . . . A. Evidently, they told me I was under arrest for involuntary manslaughter or something on that order.

Q. Un huh. And . . . A. They took me from the hospital to the station.

Q. All right. You ah . . . testified earlier that you were ah . . . you had been drinking heavily. A. Very heavily.

Q. That evening you . . . isn't it true that you were very, [69] very intoxicated, were you not? A. Very, very. You could ask any of the bartenders there. I was totally smashed.

Q. Even . . . even after the accident, you were still intoxicated weren't you A. Yeah.

Q. All right. That's all.

REDIRECT EXAMINATION BY SEITZ

Q. A couple of more questions if I might Your Honor. Mr. DeHaven were you driving this vehicle? A. No, sir. I was too drunk to drive anything.

Q. And are you telling me and the Court that you did not have a conversation with Mr. Saunders at the hospital? A. I don't remember seeing him there. I was so drunk I

could have talked to him, but I do not remember talking to him.

Q. And it's possible that you did talk to him? A. It is possible I could have talked to him. It is possible, but I do not remember.

Q. Is it also possible you might have told him who was driving the car? A. I don't know who was driving the car.

Q. In other words, you're saying you did not? A. I could have told him. I was so drunk, but if I would have I would not have any knowledge to it.

[70] Q. In other words, you might have told him who was driving the car? A. I could have, but I don't remember talking to him at the hospital because I was only there for a matter of minutes before the police got there.

Q. Is it possible that you told Mr. Saunders at the hospital that James Romano was driving the car? A. It could be possible. If it is, I do not remember it.

Q. No further questions, Your Honor.

ENG: No further questions.

COURT: All right. Mr. DeHaven, you need to remain outside the hearing of the case. Step outside the courtroom. Remain in the court house.

SEITZ: Mr. Saunders.

(MR. SAUNDERS DULY SWORN BY CIRCUIT JUDGE, DEAN WHIPPLE)

COURT: Step right up here Mr. Saunders and I'll ask you to raise your right hand and I'll swear you in. You may have a seat.

DIRECT EXAMINATION BY SEITZ

Q. Would you state your full name for the Court please? A. Gerald Raymond Saunders.

Q. And where do you reside, sir? A. Woodstock Trailer Court, Columbia, Missouri.

Q. And what is your occupation, sir? A. I work for Oldham Sausage out of Lee's Summit, Missouri. [71] Mr. Saunders, if I could, I'd like to direct your attention to June the 14th of this year at approximately 2:00 in the morning and I'd ask where you were, sir? A. I was standing in front of the Stein Club. I'd just walked out the door.

Q. And where were you standing on the curb of the street or . . . A. I was on the curb.

Q. What, if anything, attracted your attention sir? A. I saw a Datsun speeding down Broadway ah . . . it looked like it had swerved over the center line, went down made a U turn, came back up past the Stein Club, swerved into the parking area.

Q. And then what was the next thing you observed, sir? A. I saw ah . . . I didn't know who it was at the time, but the man had his back to me. I saw Monk or Timothy hit, thrown through the air, hit my car, landed on the sidewalk, and the Datsun swerved to a stop.

Q. Sir, I'm going to hand you what's been marked State's Exhibit 1 and I'd ask you to take a look at that if you would. A. Yes, sir, that's the car.

Q. Is this the car that you observed on the 15th? A. Yes, sir.

Q. And that's the car that struck Mr. Bradley? A. Yes, sir.

[72] Q. Then after this vehicle struck Mr. Bradley, what did you then do, sir? A. I started over towards the car and ah . . . a girl by the name of Jody climbed out of the driver's side and came back towards where he was laying on the sidewalk and I grabbed her and yelled for somebody to call the police and the ambulance and while I was holding her, the car took off across the street.

Q. Did you observe where the car went, sir? A. It went into, I believe the little parking area right across the street by the Farm and Home Savings or it was the County Court building in that parking area there.

Q. And is that the last place you saw it or . . . A. Yes, sir. Next time I looked up to see if it was there, it was gone.

Q. How . . . was this after this Miss Seificas got out of the car, did the car leave right then or . . . A. Just a matter of seconds.

Q. It just sped off? A. Yes, sir.

Q. Ah . . . did you see anybody else in the car, sir? A. Ah . . . I didn't see who was driving the car, no sir.

Q. Did you see anyone else in the vehicle, though? A. Ah . . . Terry DeHaven got out of the car?

Q. And which side did he get out of the car? [73] A. He got out of the . . . the right hand side, the passenger side.

Q. The passenger side. A. I think he went up to Mr. Bradley, yes sir.

Q. I have no further questions, Your Honor.

COURT: Cross-examination?

ENG: Yes, sir.

CROSS-EXAMINATION BY ENG

Q. Gary, you ah . . . testified that as soon as Miss Seificas got out of the car, you grabbed her, is that right? A. Yes. She . . . she was starting to walk back.

Q. She got out of the driver's side of the car, did she not? A. Yes, sir, she did.

Q. All right, and you got out and then grabbed and then you called the police? A. No, I yelled for them to call the police and an ambulance.

Q. Okay. Ah . . . isn't it true that you grabbed her and roughed her up and thought that in a very emotional

scene that . . . that she had been driving the car, in fact, killed this Mr. Bradley? A. That is correct.

Q. And didn't you state to her, "You killed Monk. You killed Monk." [74] A. Ah . . . I don't remember saying that. It's possible I might have.

Q. So you at least . . . you thought she was driving the car at the time, didn't you? A. That is correct.

Q. Had you been . . . had you been working in the Stein Club that night or been there as a patron or . . . A. I had been working there.

Q. You had been working. Had you been drinking that night? A. I'd had a few beers, yes, sir.

Q. All right. Were you intoxicated? A. No, sir.

Q. Ah . . . ah . . . you're acquainted with Jim . . . the defendant here's brother, Eric Romano, are you not? A. Yes, sir.

Q. Ah . . . isn't it true that he also drives a Datsun 240Z? A. Yes, sir. Yes, sir.

Q. What . . . what color is that car? Is it a dark colored car? A. It's ah . . . I think it's a dark brown.

Q. Okay, ah . . . okay, ah . . . are you . . . I think in some of the police reports, you . . . you stated that you were aware that this silver Datsun was one that was commonly driven by the defendant, is that correct? A. I recognized the car, yes sir. Or the model make or . . .

[75] Q. Does . . . have you ever observed anybody else ah . . . drive that particular car? A. No, sir.

Q. You've never seen Jody Seificas driving that car? A. No, sir.

Q. Or Eric Romano? A. No, sir.

Q. How about Cathy Romano? Has she ever . . . did you ever see her drive it? A. Not that I can relate.

Q. Thank you, that's all.

SEITZ: A couple of more questions.

REDIRECT EXAMINATION BY SEITZ

Q. I think you've already testified as to the color of this Datsun, but would you . . . what color was this Datsun that you observed coming down the street? A. It was light in color. I wouldn't swear to the exact color.

Q. Now, Mr. Eng asked you at the time if you thought Miss Seificas was driving the car. Do you still think that, sir? A. Do I think that?

Q. Yeah. A. I . . .

BALDWIN: I'll object to this Your Honor. This [76] calls for speculation and conjecture. It's irrelevant and immaterial to the issues in the case.

COURT: Overruled. He may answer.

A. Do I think she was driving the car?

Q. (By Seitz) Yeah. A. No, I do not.

Q. And why don't you think she was driving the car?

ENG: Your Honor, I'm going to object.

SEITZ: Your Honor, I believe this was opened up by Mr. Eng.

ENG: How so?

COURT: Go ahead and state your objection.

ENG: I'm going to object. The objection is . . . it . . . it calls for speculation and conjecture on the part of this witness of he as to why he thinks somebody . . . it doesn't tend to prove or disprove any of the issue involved here in the court today.

COURT: Objection would be overruled. Gentlemen, this is a revocation hearing and under the procedure prescribed in *Moore v. Stamps*, this type of testimony is permissible and I will permit it.

Q. (By Seitz) You may answer. A. Okay. Could I have the question again. Why do I think that she was not driving or she was driving?

Q. Right. [77] A. Well ah . . . she told the police there . . .

ENG: Your Honor, I'm going to object to anything that Miss Seificas told as being hearsay ah . . . at this time.

COURT: Is Miss Seificas present to testify today?

ENG: Yes, she is.

COURT: Objection overruled.

Q. (By Seitz) What did she say, sir? A. She told the police that ah . . . Jim Romano was driving the car.

Q. And sir, did you later have a conversation with Mr. DeHaven in the hospital? A. Yes, I did.

Q. And did he tell you who was driving the car? A. Yes, sir.

Q. And who did he say was driving it? A. Jim Romano.

Q. No further questions, Your Honor.

COURT: You may cross-examine.

RECROSS-EXAMINATION BY ENG

Q. Mr. Saunders, are you testifying to the Court today that you actually heard Miss Seificas tell the policeman this or that you just know that for some reason or another? A. Ah . : . the police told me that she had made the statement that Jim was driving the car.

[78] Q. When did they tell you that, at what time? A. At the police station. She . . . they took a statement from her before they did me.

Q. But you didn't actually personally hear her tell anybody that the defendant was driving the car, did you? A. Ah . . . no, I can't say that.

Q. Okay.

COURT: All right, gentlemen, his testimony will be stricken as to this, because that would be double hearsay and I don't want to permit that. In reference, he . . . as

I understand his testimony was, he said the police told him that this Mrs. Seificas or Miss Seificas told them, so he's using double hearsay and I'm going to exclude that testimony.

SEITZ: In reference to her, I will agree Your Honor. However, it was . . . he talked directly with Mr. Saunders at the hospital.

COURT: All right. As to the police, yes, but as to Mr. Saunders that testimony may stand.

ENG: You mean Mr. DeHaven, Judge?

SEITZ: I mean Mr. DeHaven. Judge, I'm sorry.

COURT: Just a minute. Who did you talk to at the hospital?

SAUNDERS: Terry DeHaven. That's outside of the hospital.

[79] COURT: All right, as to Mr. DeHaven.

Q. (By Eng) And your statement is that Mr. DeHaven told you that it was his opinion that Jim was driving the car? A. That is true.

Q. Well, do you know how he knew that? A. I have no idea. He was in the car.

Q. But you . . . he didn't tell you that . . . exactly how he knew it, whether somebody told him or what, did he? A. No, he did not.

Q. He did . . . what was his . . . what was his exact words to you? A. I don't remember. We were out in front of the parking lot in front of the hospital and we were out there talking before we went in and he . . . he just said ah . . . why he told me I don't know.

Q. Is it possible that he could have said that ah . . . he just knew from other people telling him that Jim had driven the car? A. Are you asking my opinion? I. don't think so.

Q. Could it be possible? A. It is possible.

Q. That that is what he said? A. It is possible.

Q. Give me his exact words, Mr. DeHaven's to you as . . . as best you recall. [80] A. I can't give you exactly what he said. I can just tell you what I . . .

Q. You can't testify in Court then, today that . . . that he told you that he knew of his own personal knowledge that this defendant was driving the car whether . . . can you? A. I was under the impression that he was mad at the police and he wasn't saying anything because they were going to charge him with or threaten him with charges.

Q. But, just answer my question. You can't say that . . . A. He led me to believe that he knew who was driving the car, yes.

Q. But you can't say whether he told you that he knew of his own personal knowledge who was driving the car, can you? A. No, I can't.

Q. All right.

FURTHER REDIRECT EXAMINATION BY SEITZ

Q. If you can sir, can you recall basically what he told you concerning who was driving the car?

ENG: Your Honor, I object. I just asked him that and he said he couldn't. That's repetitious.

COURT: Overruled.

Q. (By Seitz) You may answer the question. A. Everything was such a mess that night. I can't really [81] say exactly what . . . what he . . . he told me.

Q. As near as you can recall, that's all we're asking for, sir. A. Well, hey, I don't know how to say this. All I know is that when I was standing out there talking to him, he told me that he was in the car and he told the police that he was too drunk to recall who was driving.

but he did tell me that Jim was driving the car. I don't even remember his exact words. I can't . . . I can't recall that.

Q. No further questions, Your Honor.

FURTHER RECROSS-EXAMINATION BY ENG

Q. But again, you don't whether or not he told you that he knew of his own personal knowledge, do you? A. Yes.

Q. Okay. That's all.

SEITZ: No further questions.

COURT: All right. Step aside. You need to remain outside the hearing of the courtroom.

SEITZ: Jody Seificas.

(JODY SEIFICAS DULY SWORN BY CIRCUIT JUDGE, DEAN WHIPPLE)

SEIFICAS: I do.

COURT: Would you take a seat please.

DIRECT EXAMINATION BY SEITZ

Q. Would you state your full name to the Court please? [82] A. Jody Lynn Seificas.

Q. And where do you reside, ma'am? A. 1012 Maplewood Drive.

Q. Do you know the defendant in this case, Mr. Romano? A. Yes.

Q. And how do you know Mr. Romano, ma'am? A. Ah . . . how do you mean that?

Q. Is he a real close friend? A. Yes.

Q. Dating him, is that what you would say? A. I'd say close friend.

Q. Now, if I could ma'am, I'd like to direct your attention to June the 15th of this year. Were you with Mr. Romano on that date? A. I refuse to answer that on the grounds that it may tend to incriminate me?

Q. In other words, you're taking your 5th Amendment right? A. Right.

Q. Were you with Mr. Romano at the Stein Club on that date? A. I refuse to answer that on the grounds that it may tend to incriminate me.

Q. How old are you ma'am? A. 19.

Q. Were you with Mr. Romano at the Stein Club when he closed up? [83] A. I refuse to answer that on the grounds that it may tend to incriminate me.

Q. Were you a passenger in Mr. Romano's car when it hit Timothy Bradley? A. I refuse to answer that on the grounds that it may tend to incriminate me.

Q. Did you talk to the police after this accident occurred? A. I refuse to answer this on the grounds that it may tend to incriminate me.

Q. More specifically, did you talk to officer Larry Wright concerning the facts of this accident? A. I refuse to answer that on the grounds that it may tend to incriminate me?

Q. Did you talk to Mr. Wright and isn't it true that you told Mr. Wright, Mr. Romano was driving the car? A. I refuse to answer that on the grounds that it may tend to incriminate me.

Q. Isn't it true that you told officer Wright on the night this occurred that you were a passenger in Mr. Romano's vehicle. A. I refuse to answer that on the grounds that it may tend to incriminate me.

Q. Isn't it also true that you told officer Wright that Terry DeHaven was a passenger in that vehicle when it struck Mr. Bradley? [84] A. I refuse to answer that on the grounds that it may tend to incriminate me.

Q. No further questions, Your Honor.

COURT: Cross-examination?

ENG: No questions.

COURT: Miss Seificas, stay outside the hearing of the courtroom until it's finally decided. I want to call a short recess and talk to the attorneys about this last witness.

(COURT RECESSED AT 10:32 A.M.)

(COURT RECONVENED AT 10:42 A.M.)

COURT: Call your next witness.

SEITZ: Officer Larry Wright.

(OFFICER LARRY WRIGHT DULY SWORN BY CIRCUIT JUDGE, DEAN WHIPPLE)

COURT: You may have a seat.

DIRECT EXAMINATION BY SEITZ

Q. Would you state your full name and occupation for the Court please? A. Larry F. Wright, police officer for the city of Columbia.

Q. How long have you been a police officer? A. A little over four and a half years.

Q. If you could sir, I'd like to direct your attention to the 15th day of June of this year in the early morning hours. Were you on duty on that date? A. I was.

[85] Q. At a little after 2:00, did you receive a radio dispatch? A. I did.

Q. After you received this dispatch, what did you proceed to do, sir? A. I proceeded to the Stein Club located on Broadway and Columbia, just east of 7th street.

Q. And after you arrived there, sir, what's the next thing that you did? A. I pulled up in front of the Stein Club and looked toward the curb line where I saw a white male lying next to the curb with a crowd of people standing around him.

ENG: Officer, can I ask that you speak . . . I can hardly hear you. Can I ask that you speak up just a bit.

Q. (By Seitz) Can you speak up just a little bit, Larry? A. Certainly.

Q. Then what did you do when you seen this person on the ground? A. I got out of the patrol car. I had a reserve officer riding with me, George Huge, who was trained by the fire department and ah . . . a little more involved emergency first aid than I am. He went to the victim and began to render aid before the ambulance got there and I began interviewing people who were standing around on [86] the sidewalk.

Q. Did you talk with a Jody Seificas? A. I did.

Q. And where was this at sir? A. I spoke with her right down by the corner of 7th and Broadway about oh, probably 100 feet down the street from the accident?

Q. How long was this after you had arrived that you talked with Miss Seificas? A. I would say in the neighborhood of 30 to 45 minutes.

Q. And did you ask her anything about the accident? A. I did.

Q. What did you ask her, sir? A. When I approached her, I asked her if her name . . . if her name was Jody and she said, "yes." I asked her here last name . . .

ENG: Your Honor, I'm going to object to anything that Miss Seificas said to this officer as being hearsay.

COURT: Objection would be overruled on the basis of *Moore vs. Stamps* in that hearsay evidence may be introduced at a revocation hearing where the witness is available to testify.

Q. (By Seitz) And then what did you do, sir? A. I asked her . . .

ENG: If I just might, Your Honor, for the record, [87] the witness is available for testimony, but she's taken the fifth Amendment and I believe the law is that if when she does that, it's the same as her being unavailable.

COURT: In any event, I'm going to permit objection to be overruled.

ENG: Okay.

COURT: I'm sorry, I . . . go ahead. Never mind, go ahead.

A. I asked her if her first name was Jody and she said, "yes." I asked her her last name and she told me. I then asked her if she had been riding.

ENG: Your Honor, I'd like the record to show that my objections will continue to this whole line of questioning for the record.

COURT: That would be permitted.

Q. (By Seitz) What was the next thing you asked her, sir? A. I asked her if she had been riding in the vehicle which struck the man that was laying out by the curb.

Q. Did she reply? A. Yes, she did. She said that she was.

Q. And what was the next thing that you asked her, sir. A. I then asked her who was driving the car and she said, "Jim." And I then asked her Jim Romana and she said, "yes."

[88] Q. Then what was the next thing you asked her, sir? A. I asked her if she would be willing to accompany me to the police station and give a written statement as to what had occurred.

Q. And she indicate she would do this? A. She stated she would go, but she wanted to speak to an attorney before she made any statement.

Q. Did you take her down to the police station? A. I did.

Q. And did she give you a written statement? A. No.

Q. What occurred after you arrived at the police station sir? A. When we got there, I asked her if she had a specific attorney she wanted to call and she stated, "yes." I asked who and she said, "Pa. Eng." I looked up the phone number in the directory for her and she called him.

Q. And did Mr. Eng come down to the police station? A. He did.

Q. And did he talk with Miss Seificas? A. He did.

Q. And then did you talk with Miss Seificas after he had talked with her? A. No, I did not.

[89] Q. Why . . . why did . . . did you try to? A. No. Mr. Eng came out of the room that was made available to him to speak with his client and when he came out he told me that she wouldn't answer any more questions or make any statement. I did not speak to her the rest of that night.

Q. Now, did you continue to investigating this hit and run accident, sir? A. I did.

Q. Did you ever . . . let me ask you this, did you locate what you thought might be a possible car that was involved? A. Yes, I did.

Q. And where did you locate that at, sir? A. On Park Avenue between 10th and 9th street.

Q. Approximately how far would that vehicle have been from where the accident had occurred, sir? A. About six blocks.

Q. And where was this thing? Was it setting on the street or just where was it located? A. It was parked clear back at the end of a driveway, which would put it about 45, 50 feet from the street.

Q. Sir, I'm going to show you what's been marked State's Exhibit One and ask you to look at that if you would please. Do you recognize State's Exhibit One, sir? [90] A. Yes, I do.

Q. What is State's Exhibit No. One, sir? A. It's a photo that I took on the police parking lot of the vehicle which we believe was the hit and run vehicle.

(State's Exhibit No. 2 marked, being an 8" by 10" photograph.)

ENG: Your Honor, could we approach the bench?

COURT: Yes.

(BENCH CONFERENCE NOT REPORTED)

Q. (By Seitz) Officer, when you located this car, ah . . . can you describe the car itself when you first came into contact with it? A. It was silver 280Z Datsun.

Q. Was it . . . did it appear that there had been any attempt, if any, made to conceal it? A. Yes.

BALDWIN: Your Honor, we can't hear the witness.

COURT: All right. You need to . . .

WRIGHT: I'm sorry.

COURT: Excuse me just a minute. Would you ask them to hold it down or ask them to go down in the downstairs lobby and wait. Thank you.

Q. (By Seitz) If you'd answer just loud, sir? A. Right.

ENG: Would you restate the question?

Q. (By Seitz) When you first found the car, was there [91] anything that didn't belong to the car there? A. Yes, there was.

Q. And what was that, sir? A. It was a large piece of . . . I'm not sure if it was carpeting or the . . . the layer that goes underneath. The carpeting had been placed across the front windshield of the car completely covering it from side to side.

Q. Sir, I'm going to hand you what's been marked State's Exhibit Two and I'd ask you to look at that and what is State's Exhibit Two, sir? A. This shows the car

with the front windshield covered up with the carpeting as I found it parked next to the house on Park Avenue.

Q. I have no further questions, Your Honor.

COURT: Cross-examination?

CROSS-EXAMINATION BY ENG

Q. Officer Wright, are you testifying in Court today that you found this car? A. I was advised of its location by my shift sergeant and he did not touch or approach the car until my arrival.

Q. How do you know that? A. Because he told me he didn't.

Q. All right. Officer, how many people approximately, were around the scene of this accident when you first [92] observed it? A. I would say there were anywhere from eight to twelve standing around on the sidewalk.

Q. Did you interview all of them? A. No, I did not.

Q. Other than . . . other than the testimony you just ah . . . gave about Miss Seificas, was anybody else there at the scene able to tell you who was driving the car? A. No.

Q. Would you tell me, Miss Seificas's exact words as you remember them as to the fact that the defendant was driving the car? A. I asked her if she had . . . had been riding in the car, which struck Jim Bradley and she said, "yes." I asked her if she knew who was driving the car and she said, "yes." I said "who," and she said, "Jim." I said, "Jim Romano," and she looked at me and said, "yes."

Q. You're absolutely possible that's . . . I mean, you're absolutely positive that that's the way it went? A. To the best of my . . . to the best of my memory, yes.

Q. It could . . . could your memory be wrong about those exact words? Is it possible? A. It's possible it

could be wrong about the exact phrasing. It's . . . I'm absolutely certain that she told me James . . . Jim Romano was driving the car.

[93] Q. Excuse me a minute. Officer, isn't it true that . . . isn't it true that you asked Miss Seificas not to . . . or for a statement and she said that she didn't . . . didn't . . . wasn't going to give the statement? A. I asked her if she would come down to the police department and give a statement, a written statement as to what happened?

Q. If she'd already given a statement to you, why did you feel that she needed to come down to the police station and give it again? A. It was just a matter of routine that we follow in any instance where we have witnesses.

Q. Isn't it true that she . . . she said she didn't want to give a statement until she could see a lawyer? A. That's right.

Q. And then at that time you said, you giving a statement . . . "you not giving a statement is not going to help Slick." Did you say those words to her? A. Not that I recall.

Q. Is it possible that you did? A. I don't think I told her at that time that her not giving a statement was going to help him, no.

Q. You don't remember then, making that statement to her "that you . . . you not making a statement isn't going to help Slick." You don't remember saying that? [94] A. I may have said that. I don't believe that I said it when I first talked to her there on the street.

Q. Do you remember that . . . that she made a response to you stating "Slick who?" And then you stated, "Slick Romano." And she said, "you mean, Jim Romano."

SEITZ: Your Honor, I would object to this line of cross-examination. We're having quotes from a wit-

ness here who has never even testified this information. He is questioning this man with . . . concerning what someone else said out of courtroom. I don't think that's proper cross-examination.

COURT: Objection overruled. I would permit it.

Q. (By Eng) Isn't that true? A. Would you repeat it.

Q. That . . . that she said to you, "you mean when you said Slick Romano" . . . Slick, she asked you, "you mean Slick . . . you mean." Or she said, "Slick who?" And you said, "Slick Romano," and she said, "you mean, Jim Romano." A. I may have called him Slick Romano, yes.

Q. All right. Through all of this could you have just thought that she had indicated that Jim Romano was driving the car through this conversation as I have just . . . just stated to you? A. No.

Q. That's not possible? [95] A. No.

Q. Why . . . Officer Wright, were you the one that arrested Terry DeHaven and charged indicating that you were charging him with manslaughter? A. To the best of my knowledge, Terry DeHaven was never arrested.

Q. Well, he just stated to Court earlier that he was arrested. A. He may have misunderstood the officer that picked him up over at the Med Center.

Q. Who was the officer that picked him up? A. I have no idea. I merely requested that he be brought to the police station if he could be located.

Q. All right. Officer Wright, didn't you . . . isn't it true that you told Jody Seificas that she would quite possibly and probably be arrested for manslaughter should this boy die? A. No, I did not. I said that if the prosecutor so desired, he coould prosecute her as an accessory

to a felony. I told her that it would be possible. I did not tell her it would be probable.

Q. Did you tell her about the charge of manslaughter though? A. I told her it could be manslaughter if the guy died, yes.

Q. Was that before or after she made the statement to you [96] that the alleged . . . the statement you claim she made to you? A. After.

Q. Was this ah . . . did you do this to prompt her to come down and give this written statement or give another statement? A. Not necessarily to prompt her. I just wanted her to know that it was a serious offense.

Q. Well, this was a threat by you, wasn't it, to get her to make statements about what had happened? A. No, it was not.

Q. Well, what was its purpose? A. Like I said, I just wanted her to know that a hit and run accident was a felony. I explained that to her.

Q. Isn't it true that at that time you . . . it . . . it was very possible that she could have been driving the car in your mind, isn't it? A. No.

Q. It wasn't? A. No.

Q. But hadn't Gary Saunders told you that ah . . . that he had . . . hadn't you heard about him grabbing Jody . . . Jody and stating that ah . . . she was the one that had killed Monk? A. No. Saunders never told me that.

[97] Q. Did you talk to Gary Saunders? A. I did.

Q. And what . . . What did Mr. Saunders say, if anything about Jody Seificas? A. He stated that after the accident occurred that the car first stopped there where the boy was struck and that Mrs. Seificas got out of the car and he said that at first when he saw her get

out, he thought that she had been driving and that he grabbed a hold of her, but he said that after the car pulled away and that looking back on the accident itself that it appeared to him that she'd gotten out of the back seat.

Q. That's all Your Honor.

COURT: Thank you. Redirect?

SEITZ: Just a couple of questions.

REDIRECT EXAMINATION BY SEITZ

Q. Mr. Wright, when you located the car, was this defendant Mr. Romano at the car? A. No, he was not.

Q. Was there anyone at the car? A. There was no one directly at the car, no.

Q. While you were there, did you observe anyone? A. I observed the gentlemen who runs . . . runs or owns the Stein Club that lives in that house where we found the car of the driveway and there was another [98] individual there with him and when I was approaching the car from the street they came out the front door and at about the same time someone ran out the back door out across the back yard.

Q. Did you check the back part of the house? A. Yes.

Q. What did you observe back there? A. We found a place where someone had run off through the grass and up the side of a small embankment.

Q. No further questions, Your Honor.

RECROSS-EXAMINATION BY ENG

Q. Officer, did you attempt to take any footprints or anything where you say somebody run off? A. It was kind of hard to get footprints off of grass.

Q. Did you check the path ah . . . A. Yes.

Q. All the way where it might lead? A. The area was checked. Back yards, front yards, sides of houses, and garages within a block and a half radius of where the car was found.

Q. For footprints and what not? A. For anybody.

Q. For anybody? A. Well, we were looking specifically for Mr. Romano.

Q. Yeah, but the next day did you check for footprints [99] anyway around back there that might tend to show that it was this defendant that was the person that ran back through the yard? A. No, I did not.

Q. Did anybody? A. Not that I know of.

Q. That's all.

COURT: Thank you.

SEITZ: No further questions.

ENG: I might want to recall this witness.

COURT: All right. Officer Wright, you need to stay outside the hearing of the case.

SEITZ: Mrs. Bradley.

(MRS. BRADLEY DULY SWORN BY CIRCUIT JUDGE, DEAN WHIPPLE)

COURT: Mr. Eng, to further clarify the objection awhile ago on the hearsay evidence. It's not the availability of the lady, *Moore vs. Stamps*, which also cites Gagnon Supreme Court case says as long as the probationer and his counsel are available to cross-examine the witnesses hearsay evidence is admissible in a revocation hearing. That's the basis of my ruling. Step forward ma'am. Thank you. Would you have a seat please.

DIRECT EXAMINATION BY SEITZ

Q. Would you state your full name for the Court please? [100] A. Mary Ann Bradley.

Q. And where do you reside ma'am? A. St. Louis.

Q. And what is your occupation ma'am? A. Day care center operator and owner.

Q. Now, a Mr. Timothy Bradley previously testified. What relationship is there between you and him? A. He's my son.

Q. If I could ma'am, I'd like to direct your attention to the 15th of June. Did you come to Columbia on that date? A. Yes.

Q. And where did you go after you came to Columbia? A. Directly to the University Medical Center.

Q. And after your arrival there, what did you do? A. Ah . . . we asked directions to Tim's room, and we tried to also look up possibly one or two of his doctors.

Q. And did you get to where they were keeping your son? A. Right.

Q. Approximately what time did you arrive there? A. We got the telephone call about 8:00. We left about 9:00, so we arrived there possibly about 11:00, between 11:00 and 12:00.

Q. Now, while you were in the hospital room with your son, [101] did Mr. Romano enter the room? A. Yes.

Q. Now, do you see Mr. Romano here today? A. Yes.

Q. Would you point him out for the Judge? A. Right there. (Indicating)

Q. And after he entered the room, did he have any conversation with anyone in the room? A. Yes, he more or less talked to Tim. I assume his comments were directed to Tim.

Q. And what did Mr. Romano say to Tim or Mr. Bradley? A. There were two statements that I remember and the one statement was, "I'm glad to see you're still talking," and the second statement was, that stands out in my mind, "it's too bad you jumped in front of me."

Q. Now, who else was present in the room then? A. Myself, my son, my two daughters, a nurse, ah . . . there was a young man in the next bed, and one of Tim's roommates.

Q. I have no further questions, Your Honor.

COURT: Thank you. Cross-examination?

CROSS-EXAMINATION BY ENG

Q. Mrs. Bradley, who was the other roommate that was present at the time? A. He's sitting right out in the hall with the blue and [102] beige shirt.

Q. What's his name? A. His last name is Fallon. He's from St. Louis, Webster Grove.

Q. Greg Fallon? A. Right.

Q. And he was present when these statements were allegedly made by the defendant? A. Yes.

Q. Okay. All right, Mrs. Bradley, are you absolutely sure that those were the exact words? A. Yes.

Q. It's not possible that he may have said, "too bad you jumped out in front of my car or too bad you jumped out in front of the car?" A. No.

Q. That's not possible. A. The way I heard it was, "it's too bad you jumped out in front of me."

Q. Mrs. Bradley ah . . . did you seek legal advice . . . legal counsel in regard to your son's personal injuries in this? A. Under these circumstances, yes.

Q. And ah . . . who did you seek legal counsel with? A. Mr. Oxenhandler.

[103] Q. Of the law firm of Tofle, Mack, & Oxenhandler in Columbia, Missouri? A. Right.

Q. And they now represent you in that . . . in that personal injury case? A. They do not represent me. They represent him.

Q. Okay. But, you went and saw them about it, didn't you? A. I saw who?

Q. The lawyer. A. Ah . . . under these circumstances which ah . . .

Q. Well, just answer my question. Didn't you . . .

SEITZ: Your Honor, I'll object to badgering the witness. She's trying to answer the question.

COURT: Sustained. Give her time to answer.

Q. (By Eng) All right. I'm sorry. A. Would you repeat that.

Q. I said but you went to see this lawyer, did you not? A. No, I did not go to see them. I placed a phone call and he came to the hospital the second day.

Q. What do you mean, placed a phone call? You called up this firm? A. Yes. My husband and I.

Q. Tell me how that went. Tell me how that went, then you called, your husband and you called up this particular law firm? [104] A. Right.

SEITZ: Your Honor, I'm going to object. I think true one can show perhaps biased or the credibility of a witness, but I don't believe . . . I think it's truly irrelevant to go into phone calls and everything like that. You can try to impeach a witness by saying did you not do this, but I don't think you can go to details Mr. Eng's going to.

COURT: What's the purpose of your question, Mr. Eng?

ENG: Just to show that the interest . . . that this witness has an ah . . . ah . . . perhaps the outcome of this and in a possible lawsuit in regards to the same facts are involved here today. It goes to the credibility.

COURT: I think it would be obvious on the record that the mother of the accident victim would be interested in the case and I don't see any other materiality. I'm going to sustain the objection.

ENG: All right.

Q. (By Eng) All right, now you testified at this defendant's preliminary hearing in Columbia, Missouri in

the Magistrate Court there in front of Judge Morgett about this incident, did you not? A. Yes.

Q. At that time ah . . . the witnesses were excluded from the [105] courtroom, isn't that correct? A. Correct.

Q. And you . . . where were you while you were waiting to testify? A. In a side room.

Q. Was your daughter in that side room with you? A. Yes.

Q. Did you discuss what your testimony and her testimony might be in that preliminary hearing with her prior to coming into the Court and testifying? A. At that date, yes, we talked about it.

Q. And isn't it true that you went over with her exactly what your story was going to be ah . . . as far as what the statements were? Isn't that correct? A. We both heard the same statements.

Q. But didn't . . . my question is, didn't you and her discuss exactly what you were going to testify in Court about? A. We assumed what the questions would be, yes.

Q. Do you remember the Judge admonishing you before you left, not to discuss the case with any other witnesses? A. I heard him say do not discuss the case. We always discuss the case.

Q. So, you did exactly what the Judge told you not to do? A. We discussed what we thought would be asked.

[106] Q. All right. That's . . . that's all.

COURT: Redirect?

SEITZ: No redirect, Your Honor.

COURT: Thank you Mrs. Bradley, you may step down. Remain outside the court house.

ENG: I might want to recall this witness.

COURT: Right. Call your next witness.

SEITZ: She's going to have her come in.

(COLLEEN HILBERT DULY SWORN BY CIRCUIT JUDGE, DEAN WHIPPLE)

DIRECT EXAMINATION BY SEITZ

Q. Would you state your full name for the Court please? A. Coleen N. Hilbert.

Q. How do you spell your last name? A. H-i-l-b-e-r-t.

Q. And . . .

ENG: Your Honor, in the interest of . . . I'll be willing to stipulate that this is the sister of the victim ah . . . that we've been discussing and that she was present in the hospital room with him on the date after the accident.

SEITZ: That's very fine with us, Your Honor.

COURT: All right. You may proceed.

Q. (By Seitz) When you were in the hospital room of your brother's, did this individual come in? A. Yes, he did.

[107] Q. And did he make any statements? A. Yes.

Q. Who did he . . . who did he talk to? A. My brother.

Q. And did you hear what he said to your brother? A. Yes.

Q. What did Mr. Romano say to your brother? A. Well, the first thing he said, he said when he came in, he says, "well, I'm glad to see you're still talking," and then he said, "too bad you had to jump out in front of me like that, it was a nightmare."

Q. I have no further questions, Your Honor.

COURT: Thank you. You may cross-examine.

CROSS-EXAMINATION BY ENG

Q. I forgot your last name? A. Hilbert.

Q. Miss Hilbert, ah . . . are you exact, are you positive that those were the exact words that were stated that day? A. Yes.

Q. Now, you testified in preliminary hearing in Columbia, Missouri about a week ago, did you not? A. Yes.

Q. Okay. And prior to that testimony the witnesses were excluded and you were in a room with your mother and [108] other witnesses before your testimony, were you not? A. Yes.

Q. Did you discuss with your mother what your testimony and her testimony would be in that preliminary hearing? A. Yes.

Q. And isn't it true that you sort of got your story straight as to what the exact words were, isn't that correct? A. No, that wasn't no.

Q. That's not true? A. I knew what I was going to say before I even got to Columbia.

Q. Un huh. Then why were you discussing it with your mother? A. We had been discussing it all along.

Q. Why did you feel the need to discuss it right before you went into court to testify? A. I didn't feel any.

Q. Do you remember the Judge admonishing you before you left after he swore you in, not to talk with any other witnesses ah . . . prior to your testimony in the courtroom that day? A. I couldn't hear everything he said.

Q. So, your testimony is that you didn't hear him say that, is that right? A. Hun uh.

[109] Q. You didn't hear him say that? A. (Shakes head) I was trying to listen to him.

Q. But you did discuss with your mother before your testimony about ah . . .what your testimony would be and she told . . . A. I said we've been discussing it all along.

Q. All right. And your testimony was that . . . Okay, let me ask you this, is it possible that the statement was, "too bad you . . . you had to jump out in front of my car." Is it possible? A. No.

Q. Was it possible the statement was, "too bad you had to jump out in front of the car." A. No.

Q. Who else was present in the room at the time this . . . these alleged statements were made? A. My mother, my father, my sister, myself, Timmy, Romano, and some other guy, I do not know who he is. Ah . . . it's . . . he's outside.

Q. Greg Fallon? A. Has he got blonde hair?

Q. I don't know. A. I think that's who it is.

Q. Ah . . . do you know him to be one of your brother's roommates? [110] A. Yes.

Q. Okay. That's all. Thank you.

REDIRECT EXAMINATION BY SEITZ

Q. Couple of further questions. In all these discussions concerning this with your mother, did the two of you decide to change any of what you thought you heard? A. No, not at all.

Q. And I think you've indicated that your father was in the room? A. Un huh.

Q. Does your father have a handicap, ma'am? A. Yes, he does.

Q. And what is that? A. He's legally blind.

Q. But he was present when these statements were made? A. Yes.

Q. No further questions.

ENG: I might want to recall the witness, but I have no further questions.

COURT: Thank you Mrs. Hilbert, you may step aside. You need to remain outside the hear . . . courtroom.

SEITZ: Would you have your father come in.

(MR. BRADLEY DULY SWORN BY CIRCUIT JUDGE, DEAN WHIPPLE)

COURT: Just have him go ahead and take the witness seat. Are you Mr. Bradley, is that correct?

[111] BRADLEY: Yes. Would you raise your right hand please. Thank you.

DIRECT EXAMINATION BY SEITZ

Q. Would you state your full name for the Court please. A. James F. Bradley.

Q. And what is your occupation, sir? A. Ah . . . at present time on total disability. And, my occupation before that, I was a group purchasing director for the Sister's of Mercy.

Q. And do you have a handicap, sir? A. My sight. I'm legally blind.

Q. Sir, if I could, I'd like to direct your attention to the 15th day of June. Were you and your son . . .

ENG: Your Honor, in the interest of saving time, I would enter the same stipulation.

Q. (By Seitz) Okay.

ENG: That he's the father of the victim, that he was in the hospital room at the time.

Q. (By Seitz) Were you in the room where your son was being kept at the hospital? A. Yes.

Q. And while you were there, sir, did any individual make any statements concerning the facts of the accident? A. Yes.

Q. Can you tell the Court what you heard, sir?

[112] BALDWIN: I object to that Your Honor until it can be identified as to who it was that made the statement.

COURT: You might ask further preliminary questions as to what was transpiring, what was related to him.

Q. (By Seitz) Well, you were aware of who was in the room? A. Yes, I was.

Q. And who was that sir? A. Well, may I say something before that?

COURT: Yes. You can give a complete answer. A. All right. It was stated that Mr. Romano was coming into the room.

ENG: Your Honor, I would object to anything . . . it was stated as being hearsay as to . . . we don't even know who said it.

COURT: Objection would be overruled as to the hearsay, have Mr. Bradley identify the parties you are referring to as making statements please.

A. My daughter came in the room. I know her voice and I can see her when she comes close and she said, "Mr. Romano is outside. He would like to come in and see you, is it all right?" And my son turned and said, "yes," but he informed the family, please do not say anything. So, whatever we heard was, . . . the room was completely in silence and it was not a bunch of people talking.

[113] Q. (By Seitz) Then did an individual enter the room? A. Yes.

Q. And did you hear this individual make any statements? A. Yes.

Q. And what did you hear him say? A. He said, "Glad to hear you talking." And then he said, "Why did you jump out in front of me," and at that time I turned to my wife and I said, "Did you hear what he said. I can't believe my ears."

Q. I have no further questions, Your Honor.

COURT: Thank you. You may cross-examine.

CROSS-EXAMINATION BY ENG

Q. Mr. Bradley, this statement that you say you heard is . . . why . . . "Why did you have to step out in front of me," is that what you said? A. "Why did you jump out in front of me."

Q. Okay. Not, "too bad you had to jump out in front of me." A. No, I don't think so.

Q. Okay. Mr. Bradley, how soon after the accident was it that you contacted an attorney with regard to your son's injuries? A. The . . . that afternoon.

Q. Before or after these statements were made? A. After the statements were made. I was concerned about [114] my son.

Q. Thank you. I have no further questions.

SEITZ: I have no redirect Your Honor.

COURT: All right. May this witness be excused or you want to hold him for recall?

ENG: No, I would finally excuse him.

COURT: All right. Mr. Seitz, do you desire to hold this witness for possible recall?

SEITZ: No, Your Honor.

COURT: Mr. Bradley, you are finally excused. You may remain in the courtroom if you desire or you may step out if you need to leave.

SEITZ: Chris Egbert.

(CHRIS EGBERT DULY SWORN BY CIRCUIT JUDGE, DEAN WHIPPLE)

(BENCH CONFERENCE)

ENG: If Mr. Seitz would indicate what he has to offer with this witness, I may stipulate to it.

SEITZ: This witness will testify, Your Honor, that ah . . . at the time the accident occurred until an hour after or an hour after Mr. Romano's arrest, there was

no one identifying this as . . . as James Romano calling the police station to report an accident.

ENG: I would stipulate to that.

COURT: Can you . . . can we identify the time of the apprehension and arrest of Mr. Romano?

[115] SEITZ: Yes.

COURT: When is that?

SEITZ: 12:55 the 15th. It occurred . . . the accident occurred about 2:00 July or June the 15th and he was apprehended in the hospital room on the 15th at 12:55. I believe was the time.

COURT: You mean just past noon?

ENG: The next day.

SEITZ: His testimony would be that he reviewed all the police reports for that time period and the law calls and he would also testify that it's standard procedure with Columbia Police Department that they take their phone calls as well as log them in. There was no one identifying themselves as Mr. Romano calling in to report an accident during that time span.

ENG: I don't know. There's no problem with that.

COURT: All right. For the Court's information, does he have information . . . does any . . . of anyone recording this accident that we're talking about? Anyone calling in to report it?

SEITZ: Other . . . none other than the call that was made responding . . .

COURT: No one possessing [professing] to be a driver or passenger of a car called?

SEITZ: No. There was no phone call to that effect.

[116] COURT: Can you all stipulate to that or you want to interrogate him as to that?

BALDWIN: Stipulate that to.

ENG: (Nods head) No problem.

COURT: All right.

(END OF BENCH CONFERENCE)

COURT: Now, can this witness be finally excused?

SEITZ: Yes.

ENG: Yes.

SEITZ: You're excused.

COURT: Sir, you're stipulated as to what you were going to testify to. You are finally excused. You may remain in the courtroom or you may step outside, whichever would be your desire.

SEITZ: I would recall Jody Seificas or whatever her name is.

COURT: Gentlemen, let's have a short recess before you talk to this witness.

(COURT RECESSED AT 11:22 A.M.)

(COURT RECONVENED AT 11:27 A.M.)

CONTINUED DIRECT EXAMINATION BY SEITZ

COURT: Mrs. Seificas, please remember you're still under oath.

SEIFICAS: Right.

Q. (By Seitz) Mrs. Seificas, you previously testified and an [117] officer testified to certain statements attributable to you. Now, I'm going to relate those to you. He's testified, you're under oath, that he talked with you the night of this accident and that you told him you were a passenger in the car. Do you admit or deny that? A. I admit that.

Q. He also testified that he talked to you.

COURT: Now, wait a minute. What'd she answer? I didn't hear your answer.

SEITZ: Would you read me the question.

A. Would you read the question?

COURT: Do you want it read or do you want it repeated?

A. I want it read. Can you play that back.

(LAST QUESTION AND ANSWER PLAYED TO THE COURT)

SEITZ: No more questions.

COURT: All right. Did you understand the question and the answer you gave?

SEIFICAS: Where you asked me if I was in the car?

SEITZ: Yes. No, I was asking you this ma'am. The question was, an officer today has testified under oath that he talked to you the night of the accident and that you made a certain statement that you were a passenger in the car and I asked you, do you admit that or deny that?

[118] SEIFICAS: Oh, I refuse to answer on the grounds that it may incriminate me.

SEITZ: He also indicated he talked to you that night while he was under oath testifying and he stated that you told him that James Romano was driving the car. Do you admit that you made that statement?

SEIFICAS: I refuse to answer that on the grounds that it may incriminate me.

SEITZ: Do you deny that you made that statement?

SEIFICAS: I refuse to answer that on the grounds that it may incriminate me.

SEITZ: No further questions, Your Honor.

ENG: I have no questions.

COURT: Just a minute Mrs. Seificas. Did you understand. I need you back on the witness stand. Did you understand the question we had read back to you?

Do you understand the question that you answered when you said yes?

SEIFICAS: No, I didn't understand.

COURT: But, what did you think you were answering?

SEIFICAS: I thought he was asking me if I was in the car?

COURT: He did.

SEIFICAS: He asked me if I was a passenger.

COURT: And what did you say?

[119] SEIFICAS: Well, I didn't . . . I mean, I didn't understand it until they read it back, if I was a passenger or if I was in it.

COURT: The question as I recall it was, Mr. Seitz advised you that a police officer testified here today that you told him the night of the accident that you were a passenger in the car. Did you understand that question?

SEIFICAS: Not the first time he asked it, no I did not. After it was read back I did.

COURT: All right. Mr. Seitz, what's your position whether or not she's waived the privilege by answering that question?

SEITZ: Your Honor, I researched the case on this and I feel that her answer to it, "I admit that," clearly waives her privilege and it opens up for questioning concerning her knowledge about this case.

FRANKLIN: Well, I might say a word about . . .

COURT: Would you identify yourself for the record.

FRANKLIN: My name is Charles Franklin. I practice law in Columbia, Missouri. My business address is on Broadway in Columbia. Ah . . . sir, the witness has told the Court that she did not understand the question. She did not understand the question until after the [120]

reporter was kind enough to read it back to her. I think there can be no waiver of the 5th Amendment privilege as under those circumstances. It wasn't clear. It wasn't clear to her what question she was answering as she so stated and she's not waived any privileges under the 5th.

SEITZ: If I might Your Honor. It appears to me that after a moment's thought ah . . . she indicated she did not understand the question, but also on the record here today, "I admit that." That's a pretty clear answer.

COURT: Mr. Baldwin.

BALDWIN: On behalf of defendant ah . . . I think it's the defendant's position in this case, an objection should be raised at this particular in time, ah . . . primarily to bolster the statement made by Mr. Franklin that a question was asked of the witness. The witness obviously and on the record did not understand the question. When the question was rephrased and repeated, a clear, concise, succinct answer to that question was given. And on behalf of the . . . the ah . . . defendant, we object at this time to ah . . . the Court's participation in this particular hearing in advising the State ah . . . or asking the State its position concerning whether or not any waiver of this particular witness' 5th [121] Amendment ah . . . rights ah . . . had been made. Now, this is clearly an adversary proceeding and ah . . . we feel that ah . . . the witness' statement . . . the rephrasing of the question . . . the very clear answer that was given ah . . . certainly does not warrant any waiver whatsoever of this particular witness' 5th Amendment rights. Again, in reference to . . .

SEITZ: Your Honor, I'm going to object to the defendant's attorney to this 5th Amendment. It's person to person only . . . only by defense counsel. Perhaps her attorney can object and counsel her, but it has nothing

to do with the other side. It's a right personal only to that individual, not to defendant's counsel.

FRANKLIN: Sir, I have no basis. I have no standing at all to object. I wish I could, but I can't. The only thing I can do is inform the Court that ah . . . my decision is that she has not waived her . . . her 5th Amendment privileges.

BALDWIN: To which we agree, Your Honor.

COURT: If anyone makes an objection as to the Court participating in the trial, it probably ought to be the State. I'm the one that wanted the question reread, but anyway, I don't think it's that material and probably alerted the defendant or excuse me, the [122] witness to the answer she gave. All right. You may step aside.

FRANKLIN: Sir, may I ask her if she's finally finished?

COURT: No, she's not. She cannot be finally excused. Call your next witness.

SEITZ: I have no futher evidence at this time.

COURT: Any evidence on behalf of defendant?

ENG: Yes.

COURT: Call your first witness.

ENG: Greg Fallon.

(GREG FALLON DULY SWORN BY CIRCUIT JUDGE, DEAN WHIPPLE)

COURT: You may have a seat in the witness chair right there.

DIRECT EXAMINATION BY ENG

Q. Would you state your name for the record, please? A. Greg Fallon.

Q. Okay. Where do you reside sir? A. 205 College Avenue.

Q. All right. Ah . . . who do you live with at 205 College? A. Ah . . . Jack Nicholas, Craig Vogel, ah . . . Monk used to live there.

Q. Monk is who? A. Tim Bradley.

Q. The person who was injured in the accident that we're [123] here about today, correct? A. Yeah, right.

Q. Ah . . . he was your roommate at the time of his injury? A. Yes.

Q. All right, ah . . . are you and he good friends? A. Who me and Tim?

Q. Yeah. A. Yeah, un huh.

Q. You work with him? A. Ah . . . never did that, no.

Q. You don't work with him? A. No, hun-uh.

Q. Oh. A. I was hired right after ah . . . he quit or he wasn't able to work anymore.

Q. After he was injured? A. Like I took over his job.

Q. You took . . . got a job at the Stein Club? A. Un huh.

Q. You now work there? A. Yes.

Q. All right. The next day after this ah . . . accident, did you have occasion to ah . . . be in Mr. Bradley's hospital room? A. Yes.

[124] Q. Ah . . . how many times were you there that day? A. Ah . . . I'm not really sure. I was probably there a couple of times. I was there in the morning about 1:30 and then I imagine I came back that afternoon. In fact . . .

Q. When you went in the morning, did you go by yourself? A. No, hun-uh.

Q. Who went with you? A. Jim Romano.

Q. The defendant? A. Yes.

Q. Okay. Ah . . . when you went in the afternoon, you went by yourself, didn't you? A. Yes.

Q. Jim Romano was arrested at . . . at the hospital room ah . . . when you went in the morning, wasn't he? A. Yeah, they came in the room.

Q. All right. Ah . . . were you present in the room in the hospital room, the entire time Jim Romano was in the hospital room with Tim Bradley? A. Yes.

Q. All right. Ah . . . you ah . . . do you recall any statement or was . . . did Mr. Romano and Mr. Bradley have a conversation? A. Ah . . . well, he said something about not . . . not being able to go to the lake, Tim not being able to go to the [125] lake that day, that week.

Q. Whose we said that? A. Ah . . . I said it and I guess Jim said it too.

Q. Un huh. Did . . . did you hear any other . . . who else was present in the room? A. There was ah . . . me and Jim, Mr. and Mrs. Bradley, Monk's two sisters, I think there was another patient in there too.

Q. Um huh. There was another patient in the rooom? A. In the bed next to him, I think. Pretty sure he was in there at that time.

Q. And do you know that person's name, of the patient? A. No.

Q. All right. Did you at any time hear Mr. Romano make any statements ah . . . to ah . . . ah . . . Mr. Bradley concerning the accident? A. No.

Q. All right. You were in the room the entire time, isn't that correct? A. Yes, un huh.

Q. At any time when you were in that room, did you ever hear Mr. . . . Mr. Jim Romano say. I'm . . . quote, "I'm glad to see you're still talking." And also, did you hear him say that? A. No.

[126] Q. Okay. Did you hear him say either, "Why did you jump out in front of me," or "Too bad you had to jump out in front of me." A. No, huh-uh.

Q. You didn't hear that? A. No.

Q. Did you . . . were you paying attention to what was going on in the room? A. Not really. I was kind

of just ah . . . checking Monk out. I couldn't believe he was there and ah . . . just went over shaking . . . remember shaking his hand and talking . . . saying he wouldn't be able to go skiing and the next thing I knew the officer came in, got Slick and then I turned around and they grabbed Jim and took him outside and started reading him his rights.

Q. At the time Mr. Romano had his conversation with Mr. Bradley, was anybody else talking in the room or having conversation? A. Yeah, I'd say so. I mean we were all . . . I was sort of . . . I was shaking Monk's hand giving . . . you know, I was just talking to him, "It looks like you're not going to be able to ski this weekend." You know, trying to cheer him up I guess. I was really just checking him out really. I couldn't believe he was laying there like that.

[127] Q. Did you say to ah . . . Jim in your conversation with him that you're glad to see that he's still talking, anything like that? A. I . . . I didn't say that, no.

Q. Did you say anything like that? A. I shook his hand.

SEITZ: Your Honor, I'll object. This is his witness here. I think we can ask him some questions.

COURT: Sustained. Rephrase your question.

Q. (By Eng) I have no further questions.

COURT: Thank you.

CROSS-EXAMINATION BY SEITZ

Q. I have just a couple of questions, sir. Mr. Eng asked you if you heard certain statements made by Mr. Romano. Would it have been possible that he might have made statements that you didn't hear? A. True.

Q. I have no further questions, Your Honor.

COURT: Redirect?

ENG: No redirect.

COURT: Thank you. You may step aside. May this witness be excused? You want to excuse this witness or hold him?

SEITZ: As far as I'm concerned he can be excused.

COURT: All right. Remain outside the hearing of the [128] courtroom. They may need you again. Call your next witness.

ENG: Excuse me, Your Honor, may I have just a brief moment?

COURT: Certainly.

ENG: We have no further evidence at this time, Your Honor.

COURT: All right.

SEITZ: Your Honor, I would offer State's Exhibit One and Two into evidence.

ENG: No objection.

COURT: Any closing statements? First by the State.

SEITZ: If I might, just might have a few moments, Your Honor.

COURT: All right. You mean you want a few moments before you make the statement?

SEITZ: No, just a few moments to make a statement to the Court.

COURT: All right. Proceed.

SEITZ. Your Honor, I'm not going to rehash the evidence which you've heard here today, because there's not a jury here. You're the best recaller of facts and evidence that were presented anyway.

I do feel though that we've more than complied with [129] the law in this area as to a clear showing that there has been a violation of probation here and that another

felony has been committed, and that is the felony of leaving the scene.

Ewing vs. Wyrick is a Missouri case, Supreme Court 1976, 535 S.W. 2nd 442, and I think they point out the law in this area and that is that a hearing Judge need ony be reasonably satisfied that the terms and probation have been violated. They don't talk about convictions in that case, they talk about . . . the evidence does not have to reach the level of a criminal trial that is beyond a reasonable doubt. They talk about reasonably satisfied and I think the evidence, what you've heard here today should definitely reasonably satisfy the Court that this individual has violated the terms and conditions of his probation to-wit, by committing another felony in that of leaving the scene. That's all I have Your Honor.

COURT: Thank you. Mr. Eng. Mr. Baldwin.

BALDWIN: May it please the Court, Your Honor.

COURT: Yes.

BALDWIN: Mr. Seitz, what we've heard here today is testimony on behalf of individuals who could or should have known something concerning the facts of this particular instance. The accident in which Mr. [130] Bradley was rather severely injured. I have Your Honor the actual substance of what we've heard here today, certainly goes or falls far short of giving in this Court any quantum of substantive evidence ah . . . to give the Court any basis for a reasonable ah . . . feeling that the defendant did violate his parole.

We start off with Mr. Bradley. He says that he saw a vehicle. He was hit in the middle of the road, came to in the middle of the road, had no idea who it was that was driving the vehicle, couldn't describe the car. Then you talk about Mr. DeHaven. He says that ah . . . he did

not have any idea who was driving the car. That it was a car in which he had been taken home several times by Jim Romano, but again there's been no direct ah . . . evidence showing that Mr. Romano drove the car. Mr. DeHaven even further testified that he had ah . . . been consuming intoxicating beverages on this occasion. He worked from 9:00 a.m. to 6:00 p.m. and then had quote, "gone to the other side of the bar and had ah . . . become smashed." He passed out in the vehicle while it was still apparently parked and was unable to say to anyone who was in the car when it was ah . . . being driven. Who was driving the vehicle. Ah . . . the only thing that the State and the Department of Probation and Parole are relying upon as far as trying to cause this [131] defendant's parole to be revoked are strictly hearsay statements.

Now, in chambers this morning the Court ah . . . and both attorneys for both sides are aware of the fact that hearsay evidence is admissible in this particular type of hearing. What I wish to say to the Court is that the only . . . the only evidence before this Court as to who was driving this particular vehicle on the 15th day of June, 1977 is nothing but hearsay evidence. The State is relying totally upon the testimony of officer Wright who said that Jody Seificas told him that Jim Romano, defendant in this case, was driving the car.

The Court or the State is also relying upon the testimony of Mr. Saunders who said that Terry DeHaven told him that Jim Romano was driving the car. Remember . . . the Court will very well remember, I'm sure, the testimony of Terry DeHaven who said he was drunk, was passed out. If he had said anything he didn't know it and he had no basis for having said it to begin with.

Now, the testimony that ah . . . the State also is relying upon quite heavily is the testimony of members

of the family of Timothy Bradley and the Court very likely pointed out that certainly it was possible that [132] ah . . . the mother, the father, the sister of someone who had been involved in a tragic accident would be ipso facto on its face, prima facie, biased and prejudiced in the case, but of course the Court will remember the testimony of Mr. Bradley, who testified from the stand that he, his wife, his family, anyway, made contact with attorneys the afternoon of this accident. Less than 12 hours later after this accident had taken place. They had already hired or contacted a law firm in Columbia, Missouri to represent them in a civil action against this defendant and I think that that's . . . is very important for the Court's consideration as to bias, as to interest and also as to the credibility.

I think one thing that is further important as far as the Court is concerned in . . . in actually determining the quantum of evidence presented by the State, so as to cause this defendant's ah . . . parole to be revoked would be that the victim himself, Timothy Bradley made no statements from the witness stand, no testimony whatsoever concerning his conversations or conversation with this defendant in his hospital room prior to the defendant's arrest.

Now, we've heard the testimony from other witnesses, the mother, the sister, the father, also the roommate [133] that these statements were made, that they took place, but yet Timothy Bradley was not called upon to say, to back up the statements that his mother, his father, and his sister gave this Court concerning the admissions of guilt on behalf of defendant, Jim Romano.

Now, we are quite cognizant of the fact that there does not have to be a showing, a burden of proof to be borne for . . . by the State in this particular case beyond

a reasonable doubt. But, again, we state to the Court that this defendant has been in jail for approximately five weeks since this particular incident took place for which he is now standing before the Court to be adjudged as to whether or not his parole is to be continued or is to be revoked. And I submit to the Court that based upon the evidence that you've heard here today, based upon the content of the reports of the hearings and so on, which have been conducted by the State Department of Probation and Parole, that I don't believe there is enough here today before this Court to cause Jim Romano to go to prison and serve those prison terms which are hanging over his head.

So, therefore, at this time Your Honor, we would ask the Court to consider again very carefully the evidence that's been presented today, the source of the evidence, from who it came, the quantity of the [134] evidence, hearsay as opposed to direct evidence, and we would ask you to continue this defendant's parole. Thank you.

COURT: Thank you Mr. Baldwin. If you'll give me a few minutes to review my notes, I'll give you a decision.

BALDWIN: Also, Your Honor, we would ask that ah . . . the Court make some finding of fact and conclusions of law in this particular type of proceeding too.

COURT: All right.

(COURT RECESSED AT 11:52 A.M.)

(COURT RECONVENED AT 11:55 A.M.)

COURT: Court will reconvene from recess. Ah . . . gentlemen, one case I've been referring to all morning. cites, said I must make a written findings of what evidence I rely on. In this case, now I'm prepared to do that. What I'm going to do . . . what I was asking Mr. Romano if he had any suggestion on how they do it up north.

I'm going to announce my decision and dictate into the record the facts I rely on and then I will supply it by written record.

Mr. Romano, for your information, so you won't be in suspense, I am going to revoke your parole and I'm going to order you to serve your sentence in Missouri Department of Corrections the term of 20 years. I base [135] that upon the evidence that the witnesses presented here today. The evidence of police officer Larry Wright in that he related he talked to Jody Seificas wherein the night of the accident wherein she testified to him, although she refused to testify today that she was driving the motor vehicle. I'm further basing my decision on the testimony and the evidence of Mary Ann Bradley, Coleen Hilbert, and James F. Bradley, who related your direct statement in their presence and in the presence of the victim. "It was too bad he jumped out in front of you," which in my opinion was freely and voluntarily made and were made in your presence, of course, because you made them.

Also, the report of Chris Egbert that was stipulated to that there was no accident reported from 2:05 a.m. until 12:55 p.m. on June 15th, satisfies the requirements of the statute that you did leave the scene of an accident without reporting that accident as soon as possible to a police officer as required by Missouri Statute.

The Court also rules that the witness Jody Seificas waived her right against self-incrimination when she answered the question and the only reason there was any further response to it was that the Court stopped the question to further inquire of her of that [136] witness wherein in response to the question she answered, yes. she was a passenger in that car that night. The Court's also taking that evidence into consideration in making its decision to revoke this parole.

Any questions?

BALDWIN: Your Honor.

COURT: The only . . . the only problem I have now is Mr. Romano is whether you want to stay here before I give the written facts or whether you want to be transported to Missouri Department of Corrections in Jefferson City, Missouri to start serving your 20 year sentence?

ROMANO: I would just as soon go to Jeff City, sir.

COURT: All right. I'll give you time to consult with your attorney and your parents before you make a final decision as to that question I just asked you. Mr. Baldwin.

BALDWIN: Might I ask the Court a question concerning the time that Mr. Romano has been in jail since the 15th day of June up to the present.

COURT: He would be allowed good time towards serving of the sentence. I think that's prescribed by statute. You want additional time Mr. Romano, to talk to your attorney before you decide if you want to stay here or [137] if you want to go to Jefferson City, Missouri Department of Corrections?

ROMANO: Yes, I will talk to my attorneys.

COURT: All right. We'll take a short recess for you to do that at this time. I want . . . I want to know before I leave today.

(COURT RECESSED AT 11:53 A.M.)

(COURT RECONVENED FROM RECESS)

COURT: Mr. Romano, what's your decision?

ENG: He will not stay here Your Honor.

COURT: All right. Is there any objection on behalf of Mr. Romano or his attorneys that the written report is required by the case law be supplied to his attorney and to him after the date of this hearing?

ENG: No.

BALDWIN: No.

COURT: Or after he's transported to the Department of Corrections? All right. It is the order of this Court that the defendant, James or Nicholas James Romano be transported to the reception center of Missouri Department of Corrections in Jefferson City, Missouri there to be kept and confined in an institution or institutions to be designated by said Missouri Department of Corrections for a period of 20 years unless [138] sooner discharged according to law.

ENG: Your Honor, could I . . . their . . . the press in Columbia had some misconfusion. Those are concurrent sentences?

COURT: Yes. Now this is . . . there's 20 years been pronounced on counts 1 and count 2 and the Court has the final judgment states as . . . that the sentences shall be served concurrent and not consecutive.

ENG: Thank you.

COURT: And that is still the order of the Court. Defendant is allowed good time for the time he has been in jail since June 15th. That . . . let's compute that right quick. 34 days. Defendant allowed 34 days good time towards the serving of this sentence.

ROMANO: Your Honor, could I say something?

COURT: Yes.

ROMANO: Could I spend a little bit of time with my parents and friends?

COURT: You can discuss that with the sheriff. You're in the custody of the sheriff and ask him about it. If you have a waiting room, you might consider letting him Sheriff, but that's your decision. Cost taxed to defendant. Court will be in recess.

* * *

[139] CERTIFICATE

I, JO SCHICKEDANZ, Certified Court Reporter and Certified Verbatim Reporter for Division II of the 26th Judicial Circuit of Missouri, at Lebanon, Missouri, do hereby certify that I appeared at the time and place first hereinabove set forth, and that I tock the entire proceedings had in the within entitled cause, and that the foregoing 139 pages constitute a true, correct, and complete transcript of the said proceedings.

/s/ Jo Schickedanz
Jo Schickedanz, Official Court Reporter

COSTS: $97.30
139 pgs @ .70

EXHIBIT A

(Filed July 22, 1977)

IN THE
CIRCUIT COURT OF LACLEDE COUNTY, MISSOURI

Case No. 2437

STATE OF MISSOURI,
Plaintiff,

vs.

NICHOLAS JAMES ROMANO,
Defendant.

MEMORANDUM OF FINDINGS

This case comes to be heard on revocation hearing on the above named Defendant before Division II of the Circuit Court of the 26th Judicial Circuit on Monday, July 18th, 1977.

Missouri Department of Probation and Parole represented by Earl Seitz of Boone County's Prosecuting Attorney's office which representation is permitted by the Court.

Defendant is represented by Pat Eng, and James E. Baldwin. Both sides announce ready.

Upon inquiry of the Court, Defendant, through his attorneys, acknowledges that a preliminary hearing was held on the allegations of violating his parole by leaving the scene of an accident and that he was served with a copy of the findings of said preliminary hearing.

The Court finds it has jurisdiction over the parties and subject matter having previously sentenced the Defendant in the instant case, that the case is properly before this Court for hearing on the merits.

The Court after hearing the evidence hereby revokes the parole of the Defendant and orders execution of the sentence heretofore imposed by the Court.

The Defendant is ordered transported to the reception center of the Missouri Department of Corrections in Jefferson City, Missouri, to be kept and confined for a period of twenty years unless sooner discharged according to law.

Defendant allowed thirty-four days good time towards serving of the sentence.

The Court renders it's decision of revoking the Defendant's parole based upon the following evidence:

1) Timothy Bradley was struck by a silver Datson 280 Z in the city of Columbia, Missouri, in the early morning hours of June 15th, 1977, based upon the testimony of Timothy Bradley.

2) Gary Saunders testified that he watched Terry De Haven get out of the passenger side of the automobile after the victim, Timothy Bradley, was struck. Witness Saunders further testified upon talking with Witness De Haven at the hospital that De Haven related to him that he had told the police that he didn't know anything about the accident but De Haven indicated to Witness Saunders that the Defendant was driving the motor vehicle at the time of the accident.

3) Witness Larry Wright, police officer of Columbia, Missouri, testified that he talked with Witness Jody Siefkas

at the scene of the accident and she advised him that Jim Romano was the driver of the car that struck Timothy Bradley.

4) Mrs. Mary Ann Bradley testified that the Defendant Romano came to the room where her son, Timothy Bradley, was hospitalized and made the statement; "It's too bad you jumped in front of me."

5) Witness Colleen Hilbert, sister of Timothy Bradley, was present in Timothy Bradley's room at the time that the Defendant James Romano appeared in the room and her testimony related that Defendant Romano stated; "It's too bad you had to jump out in front of me like that, it was a nightmare."

6) James F. Bradley, father of Timothy Bradley, testified that a man entered the hospital room, whom he could not see since he is blind, but was advised by his daughter that the man was defendant, James Romano; and the Defendant stated; "Why did you have to jump out in front of me?"

7) Witness Chris Egbert's testimony was stipulated to by the attorneys, that no accident was reported to the Columbia Police Department, from 2:05 a.m. to 12:55 p.m., June 15th, 1977, by the Defendant or anyone.

8) The Court rules that the Witness Jody Siefkas intelligently understood the questions and knowingly answered the questions and did thereby wave the 5th Amendment Constitutional Right against self-incrimination and her answer is considered as material in assisting the Court in determining the Defendant did in fact drive the automobile that struck Timothy Bradley.

9) The Court further based it's decision upon the appearance and demeanor of the witnesses and the interest of the witness in the outcome of the trial, and found the victim's mother, father and sister to be truthful and straight forward in their answers.

10) The Court further finds Witness Terry De Haven to be evasive towards the answering of the questions and that the Witness Jody Siefkas was evasive and repeatedly claimed the 5th Amendment Constitutional Right against self incrimination until it was finally waived on being re-called as a witness in an obvious attempt to protect the Defendant in addition to herself.

Dated this 22nd of July, 1977:

/s/ Dean Whipple
Dean Whipple
Circuit Judge, Division II
26th Judicial Circuit

CERTIFICATE OF SERVICE

I, ..., hereby certify that I served the foregoing Memorandum of Findings on Case No. 2437, State of Missouri v. Nicholas James Romano, this ..... day of ....., 1977, by personally handing a true copy thereof to Nicholas James Romano.

.....

The decision of the Hon. Clyde Cahill, District Judge, granting respondent a writ of habeas corpus, is reported at 567 F.Supp. 882 (E.D. Mo. 1983). The complete text of the decision is reproduced for the Court at pages 28-53 of the separate appendix to petitioner's Petition for Writ of Certiorari.

The decision of the United States Court of Appeals for the 8th Circuit affirming the district court's grant of the writ of habeas corpus to respondent is reported at 735 F.2d 319 (8th Cir. 1984). The complete text of the opinion is reproduced for the Court at pages 3-27 of the separate appendix to petitioner's Petition for Writ of Certiorari.